

NEW BOOKS

Editorial Note

CULTURAL HERITAGE LAW BOOKS PUBLISHED IN 2021

*Commentary
on the 1995 UNIDROIT Convention*
[Second Edition]
Lyndel V. Prott with Thomas Adlercreutz,
Ruth Redmond-Cooper
and Marina Schneider

ISBN 9781903987438

Institute of Art and Law, Buih Wells 2021, pp. xxi + 160
Published: 6 April 2021

In 2021, the Institute of Art and Law (IAL) issued the second edition of *Commentary on the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects* by Lyndel V. Prott, former Director of UNESCO's Division of Cultural Heritage and a leading figure in international cultural heritage law scholarship. The publication was long-awaited as much time has passed since its first edition (1997), and to date it has been the most unique, comprehensive and scholarly commentary on this treaty. This second edition concerns the development over the last decades of international and domestic practices in respect of the return and restitution of cultural property, and provides not only an article-by-article analysis of

the Convention, but also addresses its wider context and impact. In this regard it takes into account a number of practices of museums and States regarding their re-evaluation of the status of objects in collections and, in some cases, return of those objects to their countries of origin. Significantly, the influence of the UNIDROIT Convention can be seen in EU cultural heritage legislation. Particularly, the 2014 EU Directive on the return of cultural objects unlawfully removed from the territory of a Member State calls on, in its introductory paragraphs, EU Member States to consider ratification of both the 1970 UNESCO and the 1995 UNIDROIT Conventions, while Regulation (EU) 2019/880 on the introduction and the import of cultural goods refers to the legal definitions included in these two treaties. Moreover, the concept of due diligence in art trading, promoted by the 1995 UNIDROIT Convention, has increasingly been articulated and recognized in EU law and policy. This second edition of Prott's *Commentary* is also the fruit of a joint endeavour with other distinguished experts in the field: Thomas Adlercreutz (ICOMOS Sweden), Ruth Redmond-Cooper (IAL), and Marina Schneider (UNIDROIT).

Legalized Identities: Cultural Heritage Law and the Shaping of Transitional Justice

Lucas Lixinski

ISBN 9781108769044

Cambridge University Press, Cambridge 2021, pp. 228
Published: 8 April 2021

In *Legalized Identities*, Lucas Lixinski, Professor at the Faculty of Law and Justice at UNSW Sydney (Australia) and a member of our Editorial Board, investigates the ways in which cultural heritage law relates to the field of Transitional Justice (TJ), broadly understood as a set of measures that allows a society to reimagine itself in the aftermath of a difficult period involving multiple human rights violations. The author argues that TJ has become an increasingly legalistic and technical field, but that its intersection with cultural heritage law (itself a technical field) opens room in both of these fields for pragmatic engagement with the realities of shifting identities and power in transitional contexts. Lixinski also argues that TJ and cultural heritage,

taken together, cancel their respective commitments to expert rule and offer possibilities for more creative and meaningful engagement with the politics of identity and transition via pragmatism.

To support this argument, the book first examines the connections between memory, identity, and transitional justice, including an important excursion on how the conservation paradigm that makes cultural heritage law so expert-centric came about as a direct response to the destruction of heritage during conflicts. After outlining the basic contours of the scholarly and policy fields with which he engages, Lixinski offers a succession of case studies to show how cultural heritage law and processes shape the identities which are narrated as a result of conflict, and how those narratives are anything but technocratic and neutral. By unpacking these narratives using a range of domestic and international case studies spanning all continents, Lixinski shows how TJ and identity narratives operate on the basis of similar general constructs, regardless of their location. He also compellingly demonstrates that law is a powerful mediator and authorizer of identities in transitional contexts. The book examines world heritage sites, intangible heritage elements, museums of memory and human rights, monuments to dictators and oppressors, underwater cultural heritage, and archives. Spanning all the major domains of cultural heritage law, the author makes a forceful case for us all to take seriously the work cultural heritage law performs in shaping transitional societies, and the field and practice of TJ itself. The book concludes by interweaving these threads against a background of pragmatism, looking in particular at memory laws in Poland as a platform to discuss the limits of authorized discourses on identity and show how awareness of their political power as law, memory, and TJ is crucial if we are to purposefully advance the requirements for building better societies. The book is written by a lawyer, but couched in extensive scholarship and practice from heritage studies and management, thus providing important insights both within and beyond the law. Lixinski offers a useful volume that can trigger important debates and offer valuable roadmaps for many societies around the world still grappling with their transitions.

*Transcultural Diplomacy
and International Law
in Heritage Conservation:
A Dialogue between Ethics, Law, and Culture*
edited by Olimpia Niglio
and Eric Yong Joong Lee

ISBN 9789811603099

Springer, Singapore 2021, pp. 467
Published: 2 May 2021

This edited volume, published by Springer, provides a substantial contribution to understanding the international legal framework for the protection and conservation of cultural heritage. The editors, Olimpia Niglio, Professor in Comparative History of Architecture at the Hokkaido University (Japan), and Eric Yong Joong Lee, the President of YIJUN Institute of International Law and Professor of International Law at Dongguk University in Seoul (South Korea), gathered together 25 studies addressing various aspects of the interconnections between heritage, culture, law, and social studies. This book thus offers a range of perspectives from different parts of the world on the impact of law in heritage conservation. Using a holistic approach, the authors demonstrate the reciprocity of interactions in programmes and projects to enhance cultural heritage in the world. This edited volume contains a selection of interesting accounts on the role of cultural diplomacy to address the intolerances that often govern international relations, causing damage to human and cultural heritage. Its main purpose is to analyse the different cultural paradigms that are present in the management of heritage, and to advocate for improvements in international laws and conventions to enable better cultural policies of individual nations for the protection of human rights. The editors submit that it is only through open dialogue between the humanities and jurisprudence that

the international community will be able to better protect and value sovereignty and promote cultural heritage for the development of a better world. Such an approach is also enhanced in the Foreword by Francesco Francioni, emeritus Professor of International Law at the European University Institute in Florence (Italy), and Francesco Follo, Permanent Observer, Holy See (Vatican) at UNESCO. This book can be of great relevance to scholars working in areas relating to law, management, and policies with respect to cultural heritage conservation and protection.

*Handbook of Intellectual Property Research:
Lenses, Methods, and Perspectives*
edited by Irene Calboli
and Maria Lillà Montagnani

ISBN 9780198826743

Oxford University Press, Oxford 2021, pp. 912
Published: 3 June 2021

In recent years, there has been unprecedented interest in intellectual property (IP) law, including in the context of the protection of cultural heritage and the realization of cultural human rights. Indeed, globalization, digitization, and the rise of post-industrial information-based industries have all contributed to the new prominence of IP law as one of the most important factors driving innovation and economic development. At the same time, the significant expansion of IP rules has profoundly impacted many areas of public policy, such as public health, the environment, biodiversity, and agriculture. The growing importance of IP law has led to an exponential growth of academic research in this area. This new handbook offers a truly comprehensive overview of the methods and approaches that could be used as guidelines to address and develop scholarly research questions related to intellectual property law. Edited by Irene Calboli, Professor of Law at Texas A&M University School of Law and Transatlantic Technology Law Fellow at Stanford University (USA), and Maria Lillà Montagnani, Associate Professor

of Commercial Law at Bocconi University in Milan (Italy), it seeks to provide a useful resource that can be used by IP researchers who are interested in expanding their expertise in a specific research method or seek to acquire an understanding of alternative lenses that could be applied to their research. This book is one of the largest compilations to date of the existing methods and approaches, viewed through different lenses, perspectives, and experiences from a diverse group of scholars from a wide range of countries, backgrounds, and legal traditions. In fact, it features 52 analytical chapters, addressing the four leading themes of this volume: the intersections between IP law and other areas of law; the relationship of IP law and the humanities; IP law and social sciences; and IP law and legal pluralism. This diversity, both regarding the topics and the authors of the contributions (thus comprising their scholarly backgrounds), is a fundamental feature of this new handbook, which is aimed to assist IP researchers across many countries in both the developing and developed world.

Tattooed History: The Story of MokoMokai Robert K. Paterson

ISBN 9788874399659

Five Continents Editions, Milan 2021, pp. 180
Published: July 2021

Tattooed History: The Story of MokoMokai is the first monograph to comprehensively explore the history of these remarkable Maori ancestors. Written by Robert K. Paterson, professor emeritus of law at the University of British Columbia in Vancouver (Canada), this work presents many sources, documents, and illustrations to explore how the unique Maori cultural process of preserving the tattooed heads of both enemies and loved ones became of interest to the Western museums, science, and art markets. The book describes the auction and sale of mokoMokai in Britain for a period of over 150 years. It discusses the collecting of mokoMokai by such renowned British collectors as Horatio Gordon Robley and W.O. Oldman, who were sometimes the source of mokoMokai for New Zealand institutions. The public sale of mokoMokai at auction

in Britain ended when Maori mounted legal challenges to such sales. These legal strategies are discussed, along with how they were replaced by comprehensive repatriation strategies that received government support and are still ongoing. *Tattooed History* presents the 250-years-long story of mokomokai in a new and exciting way, through rich historical and illustrative documentation. This book places these unique remains in the overall context of New Zealand history, the characters who formed part of it, and the emergence of an international market for ethnography after the Second World War.

Restitution: The Return of Cultural Artefacts Alexander Herman

ISBN 9781848225367

Lund Humphries, London 2021, pp. 104
Published: 30 September 2021

Debates about the restitution of cultural objects have been ongoing for many decades, but have acquired a new urgency recently with the intensification of scrutiny of the European museum collections acquired in the colonial period. Alexander Herman's fascinating and accessible book provides an up-to-date overview of the restitution debate with reference to a wide range of current controversies. Herman is Director of the Institute of Art and Law and co-directs the "Art, Business and Law" LLM developed in partnership with the Centre for Commercial Law Studies at Queen Mary University of London. This is a book about returns of cultural treasures: why they are demanded; how they are negotiated; and where they might lead. The uneven relationships of the past have meant that some of the greatest treasures of the world currently reside in places far removed from where they were initially created and used. Today we are witnessing ardent attempts to put right those past wrongs: a light has begun to shine on the items looted from Asia, Africa, the Middle East, the Americas, and the Pacific, and the scales of history are, according to some, in need of

significant realignment. This debate forces us to confront an often dark history, and the difficult application of our contemporary conceptions of justice to instances from the past. Should we allow plundered artefacts to rest where they lie – often residing there due to the imbalances of history? This book asks whether we are entering a new “restitution paradigm”, one that could have an indelible impact on the cultural sector – and the rest of the world – for many years to come. It provides essential reading for all those working in the art and museum worlds and beyond.

Regulating Transnational Heritage: Memory, Identity and Diversity Merima Bruncevic

ISBN 9781032067353

Routledge, New York 2021, pp. 166

Published: 14 October 2021

This book, published within Routledge Studies in Cultural Heritage and International Law, addresses the topic of legal regulation of the so-called “transnational heritage”. In fact, while there is a robust body of international and national cultural heritage law, the current regulation remains quite blind to its transnational manifestations. The author, Merima Bruncevic, Director of Centre for Intellectual Property at the Department of Law, School of Business, Economics and Law, University of Gothenburg (Sweden), defines such heritage as one where there is no community recognized in law to which it can be directly attributed and that can be responsible for its safekeeping and preservation. She explains that it can also include items of heritage where claims of ownership are disputed between two or more peoples or communities. There are a number of examples of such cultural heritage; for instance the Buddhist Bamiyan statues in Afghanistan; Palmyra in Syria; the Jewish heritage of Iraq, or various items that are currently housed in large, often Western, museums as a result of colonial practices. This book, by discussing many cases of transnational heritage and the problems that arise due to the lack of regulation thereof,

analyses the manifestations of memories and constructions of communities through heritage. Importantly, it focuses on the concept of community. How are communities constructed in cultural heritage law and what falls outside the definitions of community? The book underlines that issues surrounding transnational heritage involve more than just a communal right to culture. It argues that transnational heritage also directly affects wider matters of law such as citizenship, human rights, sovereignty, as well as the movement of people and cultural goods.

Frontiers of Cultural Heritage Law James A.R. Nafziger

ISBN 9789004347632

Brill/Martinus Nijhoff, Leiden–Boston 2021, pp. xiv + 402

Published: 21 October 2021

In this book James Nafziger covers a comprehensive range of cultural heritage law. Although the field is, of course, well known to readers of this journal, we should keep in mind that it marks a relatively new landmark in the fields of both national and international law. Thus, the book's primary focus is on the frontiers of legal development in the recent past, as well as the present and future.

James Nafziger is Thomas B. Stoel Professor of Law and Director of International Programs at the Willamette University College of Law. He is Secretary of the American Society of International Law (ASIL) and Vice Chair of the International Law Association (ILA), having chaired its Committee on Cultural Heritage Law. The core material in this book is drawn from numerous work products of this ILA Committee, which are further developed and updated by Nafziger's own writings. The topics include, among others, the institutional process of creating cultural heritage law, the related role of non-governmental organizations, basic principles of international protection and cooperation ("caring and sharing"), the repatriation of cultural material, international trade controls, immunities of cultural material from seizure and court jurisdiction, cultural landscapes, and the interests of Indigenous peoples.

One important takeaway from all the material contained in this book is that cultural heritage law is the product of transnationalism at work, combining national initiatives with diplomacy, UNESCO and other intergovernmental agreements, international custom, and non-governmental initiatives such as the ILA Committee's own contributions. Its contributions have included published studies, annotated principles and resolutions, draft treaties (such as the one in force as revised by UNESCO), and a book focused on national practices in the international trade of cultural material. The volume concludes by briefly exploring the current and future frontiers of a burgeoning field that engages the daily experiences and interests of the public. It will therefore appeal to a broad readership of lawyers, policy makers, museum professionals, heritage scholars, and perhaps most importantly, students.

*Crime and Art: Sociological
and Criminological Perspectives
of Crimes in the Art World*
edited by Naomi Oosterman
and Donna Yates

ISBN 9783030848569

Springer, Cham 2021, pp. 294
Published: 6 November 2021

This book brings together the work of authors who draw upon sociological and criminological methods, theory, and frameworks to produce research that pushes boundaries, considers new questions, and reshapes the existing understanding of “art crimes”, putting a strong emphasis on methodological innovation and novel theory application. Edited by Naomi Oosterman, a permanent lecturer at the Department of Arts and Culture Studies at Erasmus University Rotterdam, and Donna Yates, an Associate Professor in the Department of Criminal Law and Criminology at Maastricht University (the Netherlands), it brings together a group of authors representing criminology and sociology – two disciplines that are poorly represented in the academic discourse on art- and culture-related crimes.

Indeed, to understand topics like theft, security, trafficking, forgery, vandalism, offender motivation, the efficacy of and results of policy interventions, and the effects art crimes have on communities, the theoretical and methodological models used for analyses need to be developed and substantiated. The envisaged readership of this book includes academics, researchers, and practitioners in the fields of criminology, sociology, law, and heritage studies who have an interest in art and heritage crime.

Cross-border Claims to Cultural Objects: Property or Heritage? Evelien Campfens

ISBN 9789462362505

Part of the series of the Meijers Research Institute of Leiden University
Eleven (imprint of Boom publishers), The Hague 2021, pp. 304
Published: 11 November 2021

Although cultural objects have had a protected status since the early days of international law and the legal framework that ensures this protection is expanding, when it comes to claims by former owners to their lost artefacts the situation is less straightforward. On the one hand, claims are often not supported by positive law at all. This is especially true for historical losses such as Nazi-looted art or colonial takings, but similar problems occur in the field of more recently looted antiquities. On the other hand, non-binding regulations increasingly urge present possessors to find “just” solutions to claims – not as a legal obligation but as a matter of morality. This raises a fundamental question: if we believe that the application of the law leads to injustice, is it not time to change the law or the way it is applied? With this question in mind this book explores how claims to lost cultural objects fit in the wider legal framework, and where blind spots or clashes occur. The main insight is that the heritage value of cultural objects generally lies at the core of claims, whilst adequate legal tools to address that value is lacking. In that spirit, propositions are made to bridge the gaps

that presently exist between public and private law norms in this field. The study's aim is to identify new directions that can help further develop a field that, today, is typified by legal insecurity.

The author of this book, Evelien Campfens, is a cultural heritage law specialist and post-doc fellow at the Research Group "Museums, Collections and Society" at the University of Leiden (the Netherlands). In 2001-2015 she served as general secretary of the Dutch Restitutions Committee for Nazi looted art.

Military Necessity in International Cultural Heritage Law Berenika Drazewska

ISBN 9789004432550

Brill/Martinus Nijhoff, Leiden–Boston 2021, pp. xxvi + 365
Published: 9 December 2021

This book, published at the end of 2021, offers the first comprehensive scholarly analysis of the current meaning and scope of military necessity – a key concept in the international legal framework for the protection of cultural heritage during armed conflicts since the adoption of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. This thorny issue has come to the fore again with the large-scale cultural heritage losses which have occurred during recent armed conflicts.

The principle of military necessity is an essential component of international humanitarian law; in light of its traditional definition, it permits measures which are actually necessary to accomplish a legitimate military purpose and are not otherwise prohibited by international humanitarian law. Indeed, academic discussions commonly view military necessity uniquely through the lens of international humanitarian or international criminal law. In her book, Berenika Drazewska, Dorset Researcher in Public International Law at the British Institute of International and Comparative Law in London (UK) and Research Affiliate at the School of Law of Singapore

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Management University, presents a much broader and more comprehensive perspective. She examines developments which have arisen since 1954 across various strands of international law. This novel approach demonstrates how international cultural heritage law offers a particularly strict meaning of the concept of military necessity. As a result, the waiver of otherwise applicable restrictions and protections will be available to belligerents only in very rare and truly extraordinary circumstances.