

# Book review

***Private international law, art and cultural heritage* by Christa Roodt  
Edward Elgar Publishing Limited (2015) xxiv + 391 pages  
(ISBN-13: 978-0-19-534336-6), hardcover, £95,00**

This book constitutes a fascinating account of the relationship between private international law and cultural heritage law. The author argues in favour of a value-based approach to private international law in this regard (both in respect of jurisdiction and applicable law), inspired by the ethical standards that underlie cultural heritage law (see *eg* 340). In the course of the argument, interesting remarks are made about choice of law methodology in general, for instance, that the ‘divergence between multilateral and unilateral conflicts rules in private international law is a matter of degree rather than a strict dichotomy’ (88; also see 106).

The core of the book is perhaps to be found in chapter 5, on ‘[t]itle laundering in complex “lock” jurisdictions’. The conflict of interests between the (original) owner and a *bona fide* purchaser was traditionally solved by application of the *lex situs* at the alleged moment of transfer. As such application may in practice lead to title laundering (see *eg* 27–29 and 232), particularly in certain civil-law jurisdictions, alternative connecting factors have been proposed to apply to objects of cultural heritage (see 237–241; on the *lex originis* also see Symeonides ‘On the side of the angels: Choice of law and stolen cultural property’).<sup>1</sup> As the author supports the protection of the title of the original owner in all cases, she finds none of the proposed solutions to be fully satisfactory: ‘Ultimately, result-selection is the only route to a desirable outcome. A policy choice is required in favour of the deprived party[...]. Once this functional choice is made, the method follows’ (248).

In legal systems where the Roman-law *nemo plus iuris* principle (*Digesta* 50.17.54) applies (as in South Africa), a dogmatically more sustainable approach might be the combinatory application of, for instance, the

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<sup>1</sup> In Basedow, Meier, Schnyder, Einhorn & Girsberger (eds) *Private international law in the international arena – from national conflict rules towards harmonization and unification. Liber amicorum Kurt Siehr* (2000) 747.

traditional *lex situs* and the *lex fori* (on the application of the *lex fori*, also see 241–242, 246–248 and 347). Such a rule may either allow a choice by the re-vindicating party (the original owner chooses between the application of the *lex fori* or the *lex situs* at the time of the alleged transfer – cf the position in Belgian law: 242–243) or implies the *ex lege* cumulative application of the two legal systems (the court accepts a transfer of ownership if the alleged transfer is valid in terms of both the *lex fori* and the *lex situs* at the time of the alleged transfer). (Cf my previous proposals for alternative reference rules in international family law and international consumer protection law.)<sup>2</sup> Of course, this could be a solution only for legal systems where the internal law upholds ‘the integrity of the marketplace’ (247) and thereby ‘advances global welfare’ (43), and can unfortunately not be proposed as a global model (although, in general, the author’s internationalist approach to private international law is supported – see *eg* 340). An alternative would be the application of the norms of the *lex fori* in this regard as overriding mandatory rules and/or on the basis of public policy (cf 42–45, 241–242, 246–248 and 347–348).

The proposals by the author draw on a commendable wide comparative study of supranational and international instruments (for instance, European legislation and the relevant UNESCO and UNIDROIT treaties) and domestic legal systems located on the continents of Africa, Australasia, Eurasia and North and South America.

The cover image is from Cave 285 on the Old Silk Road, produced by an unknown ancient artist working in the Buddhist tradition (back cover; also see 11, read with n 57).

Jan L Neels  
*University of Johannesburg*

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<sup>2</sup> Neels ‘Substantiewe geregtigheid, herverdeling en begunstiging in die internasionale familiereg’ 2001 *TSAR* 692; and Neels ‘Consumer protection legislation and private international law’ 2010 *Obiter* 122.