

NOTES / AANTEKENINGE

THE COMPARATIVE LEGAL HISTORY OF LIMITATION AND PRESCRIPTION¹

1 Introduction

Within both the civil law and the common law (as well as in mixed legal systems), there are means of acquiring and losing rights, or of freeing ourselves from obligations with the passage of time. The reason for this is at least twofold: on the one hand, for a claimant, a dispossessed owner or a creditor, limitation and prescription provide stimuli for bringing the action; on the other, this sanction upon the negligence of the claimant implies in many cases a windfall for the defendant. If a creditor is negligent in protecting his assets, the law at a certain stage no longer protects him or her. As Oliver Wendell Holmes, Jr. said aptly some 100 years ago: “Sometimes it is said that, if a man neglects to enforce his rights, he cannot complain if, after a while, the law follows his example”.

2 European *Ius Commune*

By saying so, Oliver Wendell Holmes, Jr. followed the example set by the medieval glossators. Rogerius wrote in his *Dialogus de Praescriptione* that the defence of the limitation statute of thirty years is raised whenever the claimant in slipshod fashion and negligently omits to bring the action he has, although there was no legal impediment to do so:

“Tunc demum oritur [xxx. annorum praescriptio], cum actor nullo iure petere impeditus desidiae negligentiae deditus quod ei etiam statim ius concedit, petere contemnit; et enim soli cum non egerit ei imputatur cui nil quominus ageret obfuit. ut C. de praescr. xxx. uel xl. ann. l. Sicut (C. 7.39.3.1) et l. Cum notissimi (C. 7.39.7pr).” (Rogerius “De praescriptione dialogus” in *Placentini de varietate actionum ...*, (1530) 171)

Azo defines in his *Summa Aurea* (C.7.34 n.1) the limitation statute (*praescriptio*) as the defence that finds its cause in the lapse of time (*exceptio ex tempore causam trahens*) and he remarks that this defence has two aspects – in relation to the possessor, a favourable aspect, and in relation to the claimant, a disapproving aspect. Negligence in bringing the

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claim is punished, but punishment for the claimant in many cases implies a windfall for the defendant.

We find the same observation in a *distinctio* that is to be found in the printed editions of the Decretum Gratiani after C. 1, q. 3, c. 15:

“Prescriptionum aliae sunt odio introductae petentis et fauore possidentis: aliae tantum odio petentis ... §.2. Hae praescriptiones introductae sunt fauore possidentis et odio petentis, quia lex fauet his, qui bona fide et iusto titulo vel bona tantum fide possident, odit autem et punit circa rem suam negligentes et desides” (VIII par §.1)

Of the limitations, some are introduced out of loathing for the claimant, and some out of sympathy for the defendant, because the law favours those who are in *bona fide* possession, have good title, or are just *bona fide*, but the law dislikes and punishes those who are negligent and careless about their own assets.

For the defendant (the debtor or possessor), prescription and limitation imply a certain protection against claims that have been at rest for too long. A claim should not continuously hang above the head of the debtor like a sword of Damocles. Claims against which defences might have been lost in the course of a very long period ought to be dismissed.

The glossators found the famous text of D.41.3.1:

“Bono publico usucapio introducta est, ne scilicet quarundam rerum diu et fere semper incerta dominie essent, cum sufficeret dominis ad inquirendas res suas statuti temporis spatium).” (Gaius libro 21 ad edictum provinciale)

They read this text as a statement that limitation and prescription should serve the common interest. Usucaption was introduced for the public welfare, and especially in order that the ownership of certain property might not remain for a long time (and almost forever) undetermined when sufficient time has been granted to owners to make inquiry after their property (tr. Scott).

In the gloss *bono publico* to this text, Accursius concludes that limitation and prescription favour social welfare in the interest of all:

“[[]dest: ad utilitatem omnium commune contra aequitatem naturalem, ut supra de neg. gest. l. Item in fin. [D.3.5.5.5] et supra de condic. inde. l. Nam naturae [D.12.6.14], sed sibi imputet negligens, ut infra de reg. iur. l. Quod quis [D.50.17.203]).” (Gl. *Bono publico* ad D. 41.3.1)

However, he states that this institution clashes with natural equity, because the loss of the claimant implies the enrichment of the defendant and, thus he reads in D.3.5.5.5 and in D.12.6.14 that nobody should be enriched at the expense of the other.

In these cases, however, it is the negligence of the claimant in bringing his claim that causes and justifies the shift of title. The canonist Henry of Segusio (Hostiensis c. 1200–1271) explains similarly, why the Church should not come to the aid of creditors whose claims have expired: it would be unfair if the Church compelled payment after thirty years, for the debtor

may after all these years have lost the receipt of his payment, or believe the debt has been waived:

“Quid enim si ego solui tibi nec recuperavi instrumentum, nec de solutione instrumentum recepi, uel ipsum forte amisi, et tu non conuenis me uel heredem meum elapsis 30 uel 40 uel pluribus annis, numquid iniquum esset quod bis idem exigeretur.” (Hostiensis summa Aurea (1574) c. 736 (X 2.26, II De praescriptione § Que res)

At the medieval universities, this principle was taught both by the legists and the canonists. It is striking that the question whether the regime of limitation and prescription is compatible with the fundamental right to property still comes to court today. Recently, the European Court in *JA Pye (Oxford) Ltd v United Kingdom* (ECHR 30 August 2007 (Grand Chamber), 700) ruled that adverse possession does not breach human rights, and in *Howald Moor v Switzerland* (ECHR 11 March 2014), the court ruled that there is a violation of Article 6 § 1 of the European Convention on Human Rights (concerning right of access to a court) when persons suffering from asbestos-related diseases are unable to assert their rights owing to the rules on limitation periods.

3 Common law

If we look to the other side of the Channel we find different developments. In the common-law tradition, we have to distinguish between two currents. At law, the protection of the defendant is a cornerstone of one of the oldest pieces of legislation in the field of limitation of remedies, the Limitation Act of 1624. Lord Hatherley expressed the principle behind that legislation some 250 years later (in 1879) as follows:

“[The] legislature thought it right ... by enacting the Statute of Limitations to presume the payment of that which had remained so long unclaimed, because the payment might have taken place and the evidence of it might be lost by reason of the persons not pursuing their rights.”

The similarity between this statement and the thought expressed by Hostiensis is striking.

In equity, however, the courts used different concepts. The medieval notion of laches is used to deal with cases that at law would have been caught by the statute of limitations. The word “laches” stems from the Law French “*lachesse*”, denoting carelessness or negligence. In 1767, Lord Camden used the words “laches” and “neglect” as synonyms, when saying:

“a Court of equity which is never active in relief against conscience or public convenience, has always refused its aid to stale demands, where the party has slept upon his right and acquiesced for a great length of time. [...] (*Smith v Clay* (1767) Brown’s Chancery Reports 638). Laches and neglect are always discountenanced, and therefore from the beginning of this jurisdiction, there was always a limitation to suits in this Court”.

There is, however, not a fixed length of time, before the defence of laches will paralyse the claim. The bare fact of delay is not enough to bar a remedy in equity. As Peter Birks has put the issue aptly,

“the judge has to ask himself whether the staleness of the claim seriously disadvantages the defendant to a degree which, weighed in the balance against the claimant’s entitlement to justice, requires the action to be discontinued.” (Birks *Unjust Enrichment* (2005) 239)

The defence of laches seems in recent times to have enjoyed a certain revival since it has been raised on several occasions.

One such case is the famous *Mauthner Heirs v Elizabeth Taylor* (*Adler et al v Taylor* 2005 U.S. Dist.; *Orkin et al v Taylor* 487 F3d 734, 2007 U.S. App. LEXIS 11623 (9th Cir. Cal., 18 May 2007); *Orkin v Taylor et al* 2007 U.S. LEXIS 11852 (U.S., 29 October 2007). (On this case, see Alessandro Chechi, Anne Laure Bandle, Marc-André Renold, “Case View of the Asylum and Chapel at St. Rémy – *Mauthner Heirs v. Elizabeth Taylor*,” Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva).

In 1889, a few months after cutting off the lower part of his left ear, Vincent van Gogh painted his *Vue de l’Asile et de la Chapelle de Saint-Rémy*. Less than a year later, he committed suicide by a self-inflicted gunshot. Ownership of the painting passed firstly to the brother of Vincent van Gogh, Theo, and at a certain stage, it was sold to Margarethe Mauthner (1863–1947). She was Jewish and fled Germany in 1939. She settled eventually in South Africa, where she passed away. The painting came up for sale at a Sotheby’s auction in London in 1963. At auction, it was sold for £92 000, and the buyer, Francis Taylor passed it over to his daughter, the actress Elizabeth Taylor. Taylor’s acquisition was widely publicised at the time. She put it up for auction at Christie’s in London in 1990. At that auction, the painting remained unsold.

Forty years after the painting’s purchase by Taylor, the heirs to Margarethe Mauthner demanded its return to them, claiming that they were the rightful owners. Margarethe Mauthner, they alleged, had lost the painting involuntarily when leaving Germany as a direct consequence of Nazi persecution. Negotiations remained unsuccessful. The case went to the Court of Appeals, which applied a discoverability test, as to when the claim had accrued. Reasonable diligence on the heirs’ part would have revealed the existence of their claim against Taylor after his highly publicised purchase of the painting in 1963, the public exhibition of the painting at the Metropolitan Museum of Art in New York from November 1986 until March 1987 and the fact that the 1970 edition of Van Gogh’s *catalogue raisonné* mentioned Taylor as the owner of the painting. In fact, the court recognised that Taylor could assert a “laches defence” under Californian law, that the heirs and their predecessors had made no effort to locate or claim title to the drawing or to pursue a claim prior to the enactment of the Holocaust Victims Redress Act in 1998 and thus had been negligent in pursuing their claim, which was therefore dismissed.

The laches defence shows a significant resemblance to the German doctrine of *Verwirkung*, a concept developed in the late nineteenth century in Germany and from there exported to Switzerland as well, since the existing limitation periods were considered too extended. Case law considered the exercise of a right to be contrary to good faith if the creditor’s inactivity had

lulled the debtor into believing that the right would not later be claimed. Franz Wieacker linked this doctrine with Hugo Grotius's justification of prescription. In his *De iure belli ac pacis*, Grotius compared the claimant's protracted inactivity with abandonment or a waiver of his right. Wieacker stated: "The moral basis suggested by Grotius has proved fertile in the modern idea of *Verwirkung* or estoppel."

Negligence or, in other words, the claimant's inactivity (as the *ratio* behind and primary justification for limitation and prescription) gives way to the general interest in the common good of peaceful co-existence: *lites finire oportet*. Forerunners of Grotius, known as the Spanish late-scholastics such as De Soto, took up the remarks by Accursius and lead this way, followed by Mattheus Wesenbeck and contemporary German scholars. *Verwirkung* requires a lapse of time, but, unlike the limitation statutes, the period is not necessarily fixed. Obviously, the timespan is shorter than the limitation period, but the lapse of time and the creditor's inactivity must have induced the debtor to believe that the creditor no longer intends to enforce his right.

4 **Status quaestionis**

There is longstanding academic literature (albeit surprisingly little given the importance of the subject matter) concerning the doctrine of limitation as a general topic. In Paris, Jean Lambert in 1507 published a collection of tracts, among them a thirteenth-century tract of Dino de Mugello, which was translated into German in 1599. In 1511, Giovanni Balbo, professor of civil law in Turin, devoted his verbose *Tractatus de praescriptionibus* mainly to acquisitive prescription. In 1530, Nicolaus Roth in Frankfurt published an old, twelfth-century Compendium written by Rogerius. In 1560, there appeared a tract of the French legal humanist André Tiraqueau, who like Giovanni Balbo almost exclusively discussed acquisitive prescription. So did Joseph Pothier in his *Traité de possession et de prescription*, while he treated limitation of claims in his *Traité des obligations*.

In modern times too, academic attention is meagre until the 1970s. A milestone in the recent comparative legal history of limitation is the work by Swiss Professor Karl Spiro (1975), followed some twenty years later by the reports of the XIVth Congress of the International Academy of Comparative Law of 1994 held at Athens. On the scholarly level, from then onwards, a richer literature followed. Works by David Johnston and Reinhard Zimmermann deserve special mention. Much has been achieved from the European perspective. In 2003, the Lando Commission published recommendations for a limitation regime of contractual claims. In 2009, a European committee of scholars published a Draft Common Frame of Reference. Germany (in 2002) and France (in 2010) enacted new legislation, while Switzerland is on its way to doing so. There are numerous national law commission reports: by the Scottish Law Commission (1989, 2007 and 2012), the Law Commission of England and Wales (2001), the Irish Law Reform Commission (2011) and the South African Law Reform Commission (2011).

In this context, the Convention on the Limitation Period in the International Sale of Goods (1974) also deserves mention, even though only about twenty countries have ratified it. In 2014, the EU Commission withdrew the Proposal for a Common European Sales Law (CESL) because it intended to release a modified proposal regarding e-commerce. However, this new proposal does not contain rules on the limitation periods. Those remain in the realms of Member States. In May 2016, the English government stated that it would “bring forward proposals to respond to the recommendations of the Law Commission ... to simplify the law around land ownership”. Given the historic experiences concerning similar statements about the law on limitation periods, there is reason to be rather pessimistic.

In the 2001 project, the Law Commission for England and Wales reviewed the law on limitation periods. It recommended that the problems with the existing law should be resolved by the introduction of a single, core limitation regime, which would apply, as far as possible, to all claims for a remedy for a wrong, claims for the enforcement of a right and claims for restitution. In 2002, the then-Government accepted the recommendations in principle, subject to further consideration of certain aspects of the report. On 19 November 2009, however, the Government announced to the House of Commons that it would not include the recommendations in the Civil Law Reform Bill and would not be taking the reforms forward. In another context, it was Lord Goff who characterised “the inertia of the government here” as problematic while giving several explanations for “the present inadequate state of limitation law and the inability of legislators to fix it”.

5 Today’s problems from a historico-comparative perspective

5.1 Civil law

A bird’s eye view of these (preparatory) developments on the legislative level, both in the common law and the civil law, shows a certain similarity in the problems the legislator wants to face – namely, the differences in duration of the limitation period both of the long stop and the shorter periods; the start of those periods, with or without a discoverability test; the interruption of the limitation period; and, most importantly, the relation between the law of limitation on the one hand and the law of property on the other – and more specifically, the interdependence of the effect of limitation and the acquisition of title. If a remedy that aims at the restoration of lost possession turns out to be time barred, this state of affairs will influence the legal position of both the dispossessed owner and the actual possessor, as Roman law already shows.

The texts taken from Justinian’s codification, however, should be read with the explicit consciousness that they have little to say about pre-Justinianic Roman law, since the codification entailed a merger of the older institutions of *usucapio*, which in turn already date back to the Twelve Tables, and the *praescriptio longi temporis*, which originates from the *formula* process. Furthermore, these texts taken from the *Institutes*, the

Codex and the *Digest* should *not* be read in isolation from their interpretation by later generations; indeed, until the codification movement of the nineteenth century in France as well in Germany, it was the later interpretation of Justinian's codification (starting with the glossators) that for a substantive time determined early modern teaching and practice. Canon law also played an important role in this respect.

Departing from the idea that knowingly and willingly possessing and retaining an asset that factually and legally belonged to someone else, constitutes a mortal sin, both theologians and lawyers taught that good faith was a necessary condition, both for a defence of limitation and for (acquisitive) prescription. Civil law and canon law, however, went different ways as far as this requirement of good faith pertains.

In the case of acquisitive prescription (*usucapio* or *longi temporis praescriptio*), the Roman texts demand good faith only at the time possession is obtained. Bartolus formulated this as a general rule of civil law: in short, according to civil law, bad faith coming in later never interrupts limitation or prescription (Bartolus ad D. 41.3.5 no. 8: *Breviter de iure civili superveniens mala fides simpliciter nunquam interruptit praescriptionem*). In canon law, which Bartolus discusses as well, prescription is interrupted at the moment the possessor is convinced that he is not entitled to possess: *mala fides superveniens nocet*, a proverb which is to be found in X 2.26.20 and VI 5.13.1, but in fact goes back to Rufin's commentary on the *Decretum* (*N. Vilain, Prescription et bonne foi du Décret de Gratian (1140) à Jean Andreae* († 1348), *Traditio* 14 (1958) 121–189 141). Bartolus opted in this respect for canon law, since the requirement of good faith concerns a question of sin. Therefore the canon-law rule had to prevail, even in cases decided by civil-law courts.

This raises the question of exactly when good faith is corrupted and becomes bad faith. To establish *bona fides*, Bartolus required that the possessor be convinced he was the owner or, at least, that he believed that the one who delivered possession of the thing was its owner. The emergence of doubt is not enough to end prescription. And even once the possessor is convinced that he is not entitled, he can nevertheless continue prescription, but only if he subsequently recovers the conviction that he is, in fact, the owner. Besides, good faith is presumed by possession irrespective of whether the possessor can invoke a *titulus*. And if the possessor can indeed invoke a *titulus*, it might be rather difficult for his opponent to prove his *mala fides*.

5.2 Common law

However reminiscent the language of the English lawyers may be of the civil and canon law in some respects, there appears to be very little substantive connection. That already becomes obvious, when we realise that the common law of property still bears the stamp of feudalism. The English word "seisin" is still used today for an entitlement to a freehold estate with a right to immediate possession. However, the term dates back to feudal times. It stems from Law French, from the verb *seisir*. "Seisin" (or "seizing") denotes

the legal possession of a feudal fiefdom or fee, that is to say an estate in land. It was used in the form of “the son and heir of X has obtained seisin of his inheritance”, and thus is effectively a term concerned with conveyancing in the feudal era. The person holding such estate is said to be “seized of it”, a phrase that commonly appears in inquisitions post mortem (as in “The jurors find that X died seized of the manor of ...”).

The monarch alone “owned” all the land of England by his allodial right and all his subjects were merely his tenants under various contracts of feudal tenure. Paul Brand hypothesizes that there may have been a statute early in the reign of Henry II (1154–1189), now lost, providing that claims to land had to be based on the seisin of one’s ancestor or predecessor since 1100. For chronological reasons, this legislation cannot have been influenced by the medieval teaching of Roman law, but it is also improbable that this legislation would have been subject to outside influences from Roman law, as becomes clear when we look at the subsequent development in legislation.

Quia Emptores and *Quo Warranto* were two statutes passed in the reign of Edward I of England in 1290; they prevented tenants from alienating their lands to others by subinfeudation, instead requiring all tenants who wished to alienate their land to do so by substitution. These statutes were intended to remedy land ownership disputes and consequent financial difficulties that had resulted from the decline of the traditional feudal system during the High Middle Ages, but there is nothing that reminds of Roman law.

The same holds true for the legislation of 1540 and 1624, the successive Limitation Statutes, which structured the rules round the forms of action. The overwhelming focus of the medieval and early modern law was therefore on limitation – what a civilian would call negative prescription, the barring of a claim by lapse of time. This remains substantially the case today, although where land is concerned, a major change was wrought by section 34 of the Real Property Limitation Act of 1833, which made the language of adverse possession canonical and gave a positive effect to the lapse of time, allowing the possessor to acquire formal title as well as barring competing claims.

After the sixteenth century, the Chancery (and to a lesser extent the equitable jurisdiction of the Court of Exchequer) began to play a significant part along with the common-law rules. A closer look into the case law of these courts of equity, however, reveals that it was straightforward to refer to the statutory limitations when common-law rights were in issue in Chancery litigation, and no less straightforward to say that the statutory rules did not apply to purely equitable rights such as those arising under an express or implied trust. But there was no absolutely hard-and-fast division between claims at common law and claims in equity. It is hard not to conclude that the common law was generally applying its own rules without reference to external sources. Throughout the common law’s history of this topic, there are elusive hints of parallels with, or influences from, the civil law. Yet these remain no more than hints, and there is nothing at which it is possible to point with any measure of certainty that suggests a more concrete link. The development of English law seems to have been indigenous and

untheorised, except at the most basic level of saying that, all things being equal, long possession or enjoyment should be preserved.

6 Two currents coming together? Two recent examples

Notwithstanding their different histories, the two legal families (common law and civil law) meet regularly in court. I have given two examples. The first one was *JA Pye (Oxford) Ltd v Graham* (*supra*).

6.1 JA Pye (Oxford) Ltd v Graham

In that case, in 1984, a farmer, Graham, held on to land after his one-year grazing agreement had expired, knowing that Pye, the building company that owned the land had refused to extend the grazing licence. However, until 1998, Pye took no legal steps to bring Graham's squatting to an end. The House of Lords (*JA Pye (Oxford) Ltd v Graham* [2003] 1 AC 419) held that Graham, having been in adverse possession for more than 12 years, had acquired title to the land worth millions of pounds. Pye then brought proceedings in the European Court of Human Rights against the United Kingdom, arguing that its law on adverse possession was incompatible with Art. 1 of Protocol No. 1 to the Convention:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

The Grand Chamber found that the facts of the case were to be tested against Article 1 of Protocol No. 1, but that the English law on adverse possession did not infringe upon this article. Pye had lost ownership as a result of the operation of the 1925 and 1980 Land Registration Acts, but the existence of a 12-year limitation period on actions for the recovery of land as such pursued a legitimate aim in the general interest. The Grand Chamber accepted that to extinguish title, where the former landowner was prevented from recovering possession, could not be said to be manifestly without reasonable foundation. There was therefore a general interest in both the limitation period itself and the extinguishment of title at the end of the period. In terms of whether a fair balance had been struck between the demands of the general interest and the interest of the individuals concerned, the Grand Chamber observed that the rules contained in both the 1925 and the 1980 Acts had been in force for many years, and very little action on the part of Pye would have stopped time running (*JA Pye (Oxford) Ltd v United Kingdom* [2008] 46 EHRR 45).

6.2 The demand-and-refusal rule

The second example relates to the issues of limitation and prescription in the case of movables. In several civil-law jurisdictions, that issue is of rather limited significance. In France, the good faith possessor of a movable

acquires a new title, distinct from that of the transferor, by operation of the *possession vaut titre* principle of art. 2276 of the Code Civil. The same holds true for Italian law, where good faith acquisition of movables qualifies as a form of original acquisition. Consequently the new title is free from encumbrances, provided the acquirer was in good faith (art. 1153 of the Codice Civile).

However, an exception should be made in the case of goods stolen from the owner. During a certain, albeit limited time, civil law systems grant stronger protection to the interests of owners whose goods have been stolen. When, however, the acquisition of stolen goods took place in the ordinary course of business and the acquirer acts in good faith, the exception of stolen goods will be dismissed. This is in stark opposition to common-law jurisdictions. At common law, a thief's title is void and consequently, the thief cannot give a buyer, not even a *bona fide* purchaser, good title, and nor can the *bona fide* purchaser give good title to a subsequent buyer, and so on. The common law protects an original owner's title to stolen chattels. This phrase, however, needs some elucidation.

The first remark is, that in the course of the nineteenth and twentieth centuries, several states of the United States enacted legislation concerning limitation periods and provide that a cause of action will be barred in a forum if it is barred where it arose, accrued or originated. In this respect, New York, probably the most important state in restitution cases, went through a specific development. Since *Gillet v Roberts* (57 N.Y. 28 (1874)), it is, in New York, trite law that a good faith purchaser of stolen goods does not commit a wrong until he refuses to return the goods to the injured owner. That refusal to return is considered to be the last act that establishes the wrong and consequently the cause of action only accrues at the moment of that refusal.

This rule is known as the demand-and-refusal rule (Lazerow "Holocaust Art Disputes: The Holocaust Expropriated Art Recovery Act of 2016" 2018 52 *The International Lawyer*; and see *Solomon R. Guggenheim Foundation v Lubell* (569 N.E. 2d 426 (1991))). The demand-and-refusal rule places the accrual of the limitation period largely in the hands of the injured owner, since he has the discretion when to demand the restitution of the stolen work of art.

California ruled in § 338 (c) originally that actions for the recovery of personal property have to be filed within the limitation period of three years from the taking, detaining or injuring of the goods or chattels, but in 1983 California amended the limitation statute by providing for a discoverability test. The limitation period starts when the plaintiff discovers, or should have discovered by exercising reasonable diligence, that he has a remedy and against whom he can file the action. The recent federal Holocaust Expropriated Art Recovery Act of 2016 (HEAR) did in principle bring little change, except for the length of the limitation period.

In short, the common law systems are much more inclined to protect an original owner's title to stolen chattels than those of the civil law. This seems to be generally the case, and furthermore the laws of New York and California provide proof of that valuation. The former US Special Envoy for

Holocaust Issues, Douglas Davidson, spoke recently about “a provision in American law not common in continental European legal systems” – the idea that a stolen good is always just that. Unlike in civil systems, in the US, good faith purchasers cannot wait years and then know that their hold on what turns out to be a stolen good is secure. As American lawyers like to say, “*nemo dat quod non habet*” (no one gives what he does not have) or, more colloquially, “A thief can’t pass good title” (Davidson “Just and Fair Solutions – A view from the United States” in Campfens (ed) *Fair and Just solutions?: Alternatives to Litigation in Nazi-looted Art Disputes: Status Quo and New Developments* (2015) 91102 at p. 100).

7 Conclusion

In conflicts of interests such as between the original owner of a work of art (the Mauthner heirs) and the purchaser (Taylor), we find regulations concerning statutes of limitation, adverse possession and prescription; the general trend is that common-law jurisdictions, New York law being a prime example, are more likely to favour the original owner, whereas civil-law jurisdictions seem to be more inclined to consider commercial interests as the deciding factor. That difference is the true basis of a number of international treaties concerning the fate of looted art, such as the Washington Conference Principles on Nazi-Confiscated Art (December 1998), the Vilnius Forum Declaration (October 2000) and the Terezin Declaration (June 2009). Along that road, a certain unification seems to be possible – for the first time in history.

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