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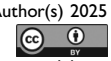

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Restitution of Objects Unethically Acquired During the Colonial Era: The Intersections of Public and Private International Law

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Abstract

The restitution of colonial cultural objects has become the subject of increasing public and academic interest. However, all too often, the literature tends to focus on the public international law (PubIIL) aspects of the debate. With a few notable exceptions, the PubIIL and private international law (PIL) dimensions of the debate are rarely considered together. In conventional accounts, the two remain separate. Individually addressed, they only tell a fraction of the story. Against this background, and informed by growing discussions on both sides of the garden of international cultural heritage law, this article makes the case for a coordinated approach. It underlines how PubIIL and PIL have failed together but also how they could contribute positively to the restitution of colonial cultural objects in the future. This will be achieved by examining the renowned yet scarcely examined Ethiopian icon of Kwer'ata Re'esu (Christ with the Crown of Thorns). Thus, this article problematises the way in which the restitution of colonial cultural objects is conceptualised, contending that these objects do not belong exclusively to the realms of the public or private, national or international, but rather occupy a liminal space in-between these domains.

Keywords

Icon of the Christ with the Crown of Thorns (Kwer'ata Re'esu), Public International Law, Private International Law, Coordinated Approach, Colonial Cultural Objects

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I. Introduction

Discussions surrounding the restitution[1] of colonial cultural objects have reached a new level of intensity. A nurturing interest in collections amassed through unethical means during the colonial era can be observed. This phenomenon manifests in diverse forms. It ranges from reports to guidelines that have appeared in various European countries (e.g. France,[2] Germany,[3] the Netherlands,[4] Belgium,[5] England[6] and Austria).[7] In some cases, states adopted legislation directly regulating colonial cultural objects (e.g., Belgium)[8] and in others, they have enacted legislation to enable advisory committees to issue recommendations (the Netherlands[9] and most recently Switzerland[10]). Preliminary discussions have been held in other countries, albeit with less vigour, including Ireland,[11] Italy[12] and Portugal (a detailed analysis of the Portuguese situ-

[1] For the purposes of this paper, the term 'restitution' is adopted to underline the legal nature of these claims – for the differences in terminology see further Lyndel V. Prott, 'Note on Terminology', in L. V. Prott (ed), *Witnesses to History: Documents and Writings on the Return of Cultural Objects* (2009) xxi, xxi–xxiv.

[2] Felwine Sarr and Bénédicte Savoy, 'The Restitution of African Cultural Heritage: Toward a New Relational Ethics' (November 2018) <https://www.about-africa.de/images/sonstiges/2018/sarr_savoy_en.pdf> accessed 13 October 2025. For a rather contrary approach see Jean-Luc Martinez, 'Shared Heritage: Universality, Restitutions and Circulation of Works of Art' (25 April 2023) <https://www.culture.gouv.fr/fr/espace-documentation/rapports/remise-du-rapport-patrimoine-partage-universalite-restitutions-et-circulation-des-aeuvres-d-art-de-jean-luc-martinez> accessed 13 October 2025.

[3] Wiebke Ahrndt et al, 'Guidelines for German Museums: Care of Collections From Colonial Contexts' (3rd Edn, February 2021) <https://www.museumsbund.de/wp-content/uploads/2021/03/mb-leitfaden-en-web.pdf> accessed 13 October 2025.

[4] Lilian Gonçalves-Ho Kang You et al, 'Colonial Collection: A Recognition of Injustice' (January 2021) <https://www.raadvoorcultuur.nl/binaries/raadvoorcultuur/documenten/adviezen/2021/01/22/colonial-collection-and-a-recognition-of-injustice/Colonial+Collection+a+Recognition+of+Injustice.pdf> accessed 13 October 2025.

[5] Vincent Boele et al, 'Ethical Principles for the Management and Restitution of Colonial Collections in Belgium' (June 2021) <https://restitutionbelgium.be/en/report> accessed 13 October 2025.

[6] Arts Council England, 'Restitution and Repatriation: A Practical Guide for Museums in England' (September 2023) <https://www.artscouncil.org.uk/supporting-arts-museums-and-libraries/supporting-collections-and-cultural-property/restitution-and-repatriation-practical-guide-museums-england> accessed 13 October 2025.

[7] Federal Ministry Republic of Austria Arts, Culture, Civil Service and Sport, 'Recommendations of the Advisory Committee for Guidelines for Collections in Austrian Federal Museums From Colonial Contexts' (20 June 2023) <https://www.bmwkms.gv.at/dam/jcr:ff8b6ec8-464e-47aa-9cdd-1b8ddf0820e8/Recommendations%20for%20Guidelines%20for%20Collections%20in%20Austrian%20Federal%20Museums%20from%20Colonial%20Contexts.pdf> accessed 13 October 2025.

[8] Bill of 03 July 2022 Recognising the Alienability of Goods Linked to the Belgian State's Colonial Past and Determining a Legal Framework for Their Restitution and Return, 28 September 2022, No. 2022042012.

[9] Institutional Decree Establishing the Advisory Committee on the Restitution of Cultural Objects from a Colonial Context, Dutch Government Gazette, 24248 (2022).

[10] Ordinance on the Independent Committee for Cultural Property with a Burdened Past, No. 444.21, 22 November 2023; Federal Act on the International Transfer of Cultural Property (Cultural Property Transfer Act, KGTG) Amendment of 21 March 2025.

[11] See, for instance, the latest work of the Advisory Committee on the Restitution and Repatriation of Cultural Heritage <https://www.heritagecouncil.ie/our-work-with-others/advisory-committee-on-the-restitution-and-repatriation-of-cultural-heritage> accessed 13 October 2025.

[12] See, for instance, DM 365, 18 October 2021, Establishment of the Working Group for the Study of Issues Relating to Colonial Collections at the Committee for the Recovery and Restitution of Cultural Heritage <https://cultura.gov.it/comunicato/dm-365-18102021> accessed 13 October 2025.

ation follows in the next section). Debates also extend beyond the European continent. South Africa,[13] Brazil[14] and South Korea[15] are pertinent examples in this regard.

Notwithstanding this ever-growing interest, certain gaps can be observed in the relevant literature. The legal discourse surrounding the restitution of colonial collections is fragmented. This fragmentation occurs among others at both public/private and national/international levels. The prevailing discourses within these respective domains typically gravitate towards either of these two focal points, with scant attention being directed towards both spheres simultaneously. Recent scholarly work on objects with complex colonial histories has underlined both these dimensions.[16]

Separating the two overlooks their complex nuances. An approach that sticks solely to public international law (henceforth: PubIIL) might not always be appropriate. Viewing the colonial era as purely a manifestation of the state is problematic in itself. The colonial era was not solely a state enterprise.[17] The circulation of colonial objects did not only occur in the hands of the state. It also occurred in private hands. Non-state actors, often occupying a quasi-position, such as companies, museums, auction houses, missionary and scientific expeditions,[18] weave a complex tapestry of transactions that might not be captured by a strict definition of the state. A private mantle conveniently cloaks such takings in restitution discourses; adjudicators will exercise discretion each in their own way in each domestic setting. Without deploying the public policy exception in private international law (henceforth: PIL), and respecting public law implications in the way PubIIL does, no hope exists to do justice to restitution claims.[19]

Against this background, this paper makes the case for a coordinated approach involving both public and private as well as international and national legal elements. To do so, this article is organised in the following way. After the introductory section (Section I), the subsequent section presents its case study, which focuses on the renowned Ethiopian icon Christ with the Crown of Thorns (Kwer'ata Re'esu). This example illustrates the interactions between the public and private spheres as well as the international and domestic domains in Section II. Sections III and IV address the same inquiries but from two distinct perspectives. Section III explores the convergence of PubIIL and PIL in the historical occlusion of the restitution of the icon. Departing from this pessimistic convergence, the remainder of the article posits a coordinated approach, thereby exposing the potential synergies that could further the restitution claim of the icon and, more generally, of colonial cultural objects (Section IV). The concluding remarks emphasise that further defragmentation of the prevailing binary thinking is needed. Cultural objects unethically acquired during the colonial era should not be confined exclusively to either the public or private spheres, nor international or national domains, for they are best situated in a liminal zone 'in-between' and on both sides (Section V).

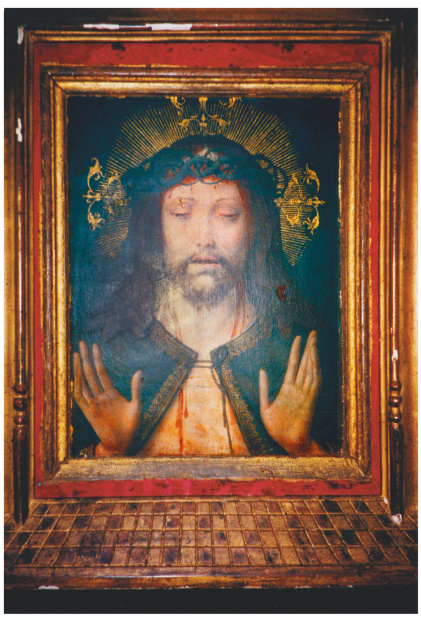
The present study adopts a broad interpreation of the term 'colonial context'. Despite the brief Italian Fascist occupation between 1935 and 1941, Ethiopia prides itself on having never been a colony. Nonetheless, colonial contexts refer to more than just the formal colonial contexts, as is explained in

[13] National Policy (South Africa) on the Repatriation and Restitution of Human Remains and Heritage Objects (2021).
[14] See, for instance, Draft Law 118 of 2024 that puts forward the National Policy for Repatriation of Artifacts of Indigenous and Traditional Peoples.
[15] Overseas Korean Cultural Heritage Foundation, Statistics <https://www.overseaschf.or.kr/eng/intro/US_AF_DI_viw.do> accessed 13 October 2025.
[16] Christa Roodt, *Restoring the Law of Restitution of Cultural Property: Complex Colonial Histories* (2025) 5-6 and 155.
[17] Christa Roodt, *Restitution of Cultural Property and the Law: Complex Colonial Histories* (2024) 20.
[18] Carsten Stahn, *Confronting Colonial Objects: Histories, Legalities, and Access to Culture* (2023) 38–39, 69–74, 104, 521–524; Jos van Beurden, *Treasures in Trusted Hands: Negotiating the Future of Colonial Cultural Objects* (2017) 40–47.
[19] Roodt, n 16.

the 2021 German Guidelines[20] and the 2024 Qingdao Guidelines.[21] Section II illustrates that colonial power dynamics affected Ethiopia and manifested in the case of the icon.

II. Illustration: The Icon of 'Christ with the Crown of Thorns'

To illustrate the liminal quality of colonial cultural objects, the article draws on the case of the icon of 'Christ with the Crown of Thorns', also known as Kwer'ata Re'esu (in Ge'ez, the ancient liturgical language of Ethiopia, this means 'the Striking of His Head').[22] A description of the icon, accompanied by its first-ever colour illustration, published in 2023, follows below. The icon is currently in the possession of a private collector located in Portugal. Having passed through the hands of various owners and possessors, and moved continents, its history transcends the conventional boundaries of the national and international and the public and private. This article invokes a legal perspective that calls for bridging of these lines.



Oil Painting on Wood, 33×25 cm, c. 1520.
Photograph © Martin Bailey (Courtesy of *The Art Newspaper*, 06 October 2023).[23]

[20] Ahrndt et al, n 3, 13.
[21] Recital 2 of the Preamble of the 2024 Qingdao Recommendations for the Protection and Return of Cultural Objects Removed from Colonial Contexts or Acquired by Other Unjustifiable or Unethical Means.
[22] The Latin name 'Ecce Homo' (meaning 'Behold the Man') is also used in reference to Pontius Pilate's announcement when he acquiesced to popular demand and presented the scourged Christ wearing a crown of thorns to the crowd (Bible: John 19: 5).
[23] Permission granted by Dr. Martin Bailey after email correspondence with the author (31 March 2025) – Martin Bailey, 'Exclusive: First Colour Photographs Shed Fresh Light on Ethiopia's Most Treasured Icon and Its Looting by an Agent of the British Museum', The Art Newspaper, 25 September 2023 <https://www.theartnewspaper.com/2023/09/25/exclusive-first-colour-photographs-shed-fresh-light-on-ethiopias-most-treasured-icon-and-its-looting-by-an-agent-of-the-british-museum> accessed 13 October 2025.

Christ wearing the crown of thorns is situated at the centre of the iconic image. Blood trickles onto His shoulders and His clothes. His hands point upwards. The eyelids are nearly closed. His head is framed by a black background with a golden halo. The frame comprises a wooden outline in gold, red, brown and other colours. This scene evokes a variety of descriptions from the Bible regarding the events that transpired in the wake of His trial and before His crucifixion.[24]

The precise circumstances surrounding the creation of the icon, including the date, location and artist responsible, remain uncertain. A plethora of theories have been proposed over the years. Believed to have been created in the mid-sixteenth century, the work is hypothesised to be of Spanish/Catalan,[25] Portuguese/Iberian[26] or Flemish[27] origin and a number of schools and/or artists have been proposed.[28] German origins have only recently been advanced.[29] The identification of its creator remains an open question and, with the permission of Martin Bailey, The Art Newspaper published its first-ever coloured image in 2023 (see above) to assist researchers in this endeavour.[30] As the date of publication of the article, no definitive conclusion has been reached.

As for the transportation of the icon to Ethiopia, several hypotheses have been put forward. The first Ethiopian account asserts that the icon was conveyed from Jerusalem to Ethiopia sometime during the reign of Emperor Dawit I (1382–1413) and the icon, painted by St Luke himself, was bestowed by the monarch of Egypt due to his fear that the Nile was being diverted.[31] An alternative theory suggests that the Egyptian Coptic Patriarch sent a gift of appreciation to the Emperor in recognition of his instrumental role in facilitating his release by the Pasha of Egypt. This gift included a piece of the True Cross, seven icons of the Virgin Mary and the icon of the suffering of Christ, known as Kwer'ata Re'esu, attributed to St Luke.[32]

Yet another hypothesis suggests that the icon was transported by a Jesuit mission to Ethiopia during the sixteenth and/or seventeenth century, when Portugal attempted to proselytise the Ethiopian Orthodox Tewahedo Church into Catholicism. The provenance of the painting remains a mystery but a Lázaro di Andrade, a painter who accompanied the Portuguese embassy to Ethiopia

[24] Bible Mark 15: 17; Bible John 19: 4–6; Bible Matthew 27: 27–31. Martin Bailey, 'From the Archive (1998): How the Art Newspaper Tracked Down Ethiopia's Greatest Icon After Its Looting by a British Agent in 1868', The Art Newspaper, 01 April 1998 <https://www.theartnewspaper.com/1998/04/01/from-the-archive-1998-how-the-art-newspaper-tracked-down-ethiopias-greatest-imperial-and-national-icon> accessed 13 October 2025. See also Martin Bailey, 'The Kwer'ata Re'esu Was Kept in a Bank Vault in Portugal, Where our Correspondent Examined it and Took Colour Photographs in 1998', The Art Newspaper, 01 April 1998 <https://www.theartnewspaper.com/1998/04/01/from-the-archive-1998-how-the-art-newspaper-tracked-down-ethiopias-greatest-imperial-and-national-icon> accessed 13 October 2025.

[25] See, for instance, Enrico Cerulli, 'Il «Gesù Percosso» Nell'Arte Etiopica e le sue Origini nell'Europa del XV Secolo' (1947) Rassegna di Studi Etiopici 109, 115 ascribing it either to a Catalan or Portuguese artist.

[26] See, for instance, Luís Reis Santos, 'On a Picture from Abisssínia' (1941) 79 (460) The Burlington Magazine for Connoisseurs 26.

[27] See, for instance, Christie's sale of 1950 ascribing it to Adriaen Ysenbrandt – Bailey, 'From the Archive (1998): How the Art Newspaper Tracked Down Ethiopia's Greatest Icon After Its Looting by a British Agent in 1868', n 24.

[28] Hans Memling, Adriaen Isenbrandt and Lázaro di Andrade.

[29] Martin Bailey, 'Unravelling the Kwer'ata Re'esu Mystery: Experts Say the Painter Could Be Iberian, Flemish – or German', The Art Newspaper, 15 November 2023 <https://www.theartnewspaper.com/2023/11/15/unravelling-the-kwerata-reesu-mystery-experts-say-the-painter-could-be-iberian-flemishor-german> accessed 13 October 2025.

[30] Bailey, n 23.

[31] Richard Pankhurst, 'The History of the Kwer'ata Re'esu: An Ethiopian Icon' (1982) 81 (322) African Affairs 117, 117.

[32] André Caquot, 'Aperçu Préliminaire sur le Maṣḥafa Ṭēfut de Gechen Amba' (1955) 1 (1) Annales d'Ethiopie 89, 100.

led by Dom Rodrigo de Lima in the early 1520s,[33] may have carried it there. It may also have been gifted or otherwise offered by Portuguese missionaries.[34]

Irrespective of provenance and how it came to Ethiopia, the icon was soon held in high esteem by the Ethiopian monarchy as an imperial standard, as well as by the Church, the community and the artistic tradition of the country. Evidence for this can be found in the parade that preceded the battle and in various Ethiopian manuscripts dating from at least the seventeenth century onwards.[35] The icon accompanied Emperor Iyasu's (1723–1755) army during a military campaign against the Sudanese Funj Sultanate in 1744. During the battle, the icon was lost to the enemy forces. The devotional loss was so significant that Ethiopian forces attempted to reclaim it. This eventually materialised after the payment of 8,000 ounces of gold. Upon its return to Gondar, the Ethiopian capital at the time, the city was 'drunk with joy'.[36] The intricate history continued in the nineteenth century.

Despite the initial cordial relations between Britain and Ethiopia under Emperor Tewodros II (1818–1868), the relationship deteriorated significantly when Queen Victoria (1819–1901) failed to respond to a letter from Tewodros requesting military assistance and technology against the neighbouring Egypt and the Ottoman Empire. In the absence of an answer, Tewodros proceeded to take the British Consul, Charles Duncan Cameron (1825–1870), and several other European missionaries hostage.[37] Following a protracted period of unsuccessful diplomatic negotiations, an expedition was dispatched to Ethiopia under the leadership of Lord Robert Napier (1810–1890). The expedition, comprising approximately 13,000 men, was tasked with the liberation of the hostages.[38] Following the siege of the rock fortress of Maqdala on 13 April 1868, Richard Rivington Holmes (1835–1911), who had been appointed by the British Museum to collect antiquities with a budget of £1,000,[39] clandestinely removed the icon out of Tewodros' tent. He benefited from his position. He was funded by the museum and was permitted to follow the army. The icon now bears Holmes' inscription 'taken from the palace of Theodorus'.[40]

In the aftermath of the civil war that ensued following the British exodus from the country, the new Emperor, Yohannes IV (1837–1889), requested the icon from Queen Victoria and the British Foreign Secretary, the Earl of Granville (1815–1891), in 1872.[41] Much to his disappointment, Queen Victoria suggested '[o]f the picture, we can discover no trace whatsoever, and we do not think it can have been brought to England'.[42] In truth, the sacred icon was on display in the living room of the Holmes residence notwithstanding its considerable cultural and political significance. A black-white photograph of the painting was published anonymously in the Burlington Magazine for

[33] Stanislaw Chojnacki, *The 'Kwer'ata Re'esu': Its Iconography and Significance: An Essay in Cultural History of Ethiopia* (1985) 12–14.
[34] Mulatu Wubneh, *Planning for Cities in Crisis: Lessons From Gondar, Ethiopia* (2023) 231.
[35] Pankkhurst, n 31, 118.
[36] James Bruce of Kinnaird, *Travels to Discover the Source of the Nile (Volume II)* (2020) 391.
[37] Major Trevenen J. Holland and Captain Henry Hozier, *Record of the Expedition of Abyssinia (Volume 1)* (1870) 10.
[38] Alex F. Shepherd, *The Campaign in Abyssinia* (1868) xx.
[39] House of Commons, Debate 07 July 1868, Volume 193, Column 829.
[40] 'A Flemish Picture from Abyssinia', Burlington Magazine, Volume 7, August 1905, 394.
[41] Edward Ullendorff and Abraham Demoz, 'Two Letters From the Emperor Yohannes of Ethiopia to Queen Victoria and Lord Granville' (1969) 32 (1) Bulletin of the School of Oriental and African Studies 135, 138.
[42] Andrew Heavens, *The Prince and the Plunder: How Britain Took One Small Boy and Hundreds of Treasures From Ethiopia* (2023) 225.

Connoisseurs in 1905, a year prior to Holmes' retirement as Royal Librarian.[43] Holmes passed away in 1911. The icon was auctioned by London's Christie's on 14 December 1917 for the sum of £420 to Mr Martin Reid of Wimbledon.[44] The inscription read: R.R. Holmes, FSA [Fellow of the Society of Antiquaries], Magdala, 13 April 1868, taken from the palace of Theodorus (Holmes, R.R., 1868).[45] Following a period of years during which it was not in the public eye, the icon was once again auctioned by the same auction house on 17 February 1950.[46] On this occasion, the *catalogue raisonné* read 'A Man of Sorrows by A. Ysenbrandt'. The text made no mention of the historical, cultural or religious significance of the icon. A brief reference to its provenance was given as 'King Theodore of Abyssinia 1868/Sir Richard Holmes KCVO'. Notwithstanding that Ethiopian authorities had not been informed of the sale in a timely manner, the transaction was completed, with the sale proceeding to an anonymous buyer supposedly called 'Grey' for the price of £315. The identity of the collector was shrouded in secrecy.[47] It remained undisclosed even after the location of the icon had been documented by Martin Bailey, for the first time, in 1998. Unsurprisingly, in the early 2000s, the icon of 'Christ with the Crown of Thorns' was included on the Antiquities Coalition's list of most wanted antiquities.[48]

The individual in question was the Portuguese art historian Luís Reis Santos, who had been advocating for the Portuguese origins of the icon since 1941.[49] The icon resided in New York for a period of years during Santos' tenure at the University of Columbia, until his death in 1967, at which point his wife became the beneficiary.[50] Negotiations about the fate of the icon took place on 11 November 2000 between Santos' heirs and the Portuguese Government. Reportedly the heirs insisted on a sum of approximately €4.2 million; however, the Ministry only offered €625,000. Following the failure to reach agreement on the financial value of the icon,[51] the Portuguese Government decided to enact legislation to prohibit its export from the country.[52] This legislation employs the name 'Ecce Hommo', pinpoints its Luso-Flemish origins around 1520, and names the current owner as Isabel Pereira Fernandes Reis Santos, daughter of Santos and resident of Coimbra, Portugal. It provides no indication of its Ethiopian provenance and history, however.

This was not the first time the Portuguese Government was approached concerning the work.[53] In view of his close connections with the ruling authorities, Santos had submitted a covert proposal

[43] 'A Flemish Picture from Abyssinia', n 40. This reads 'Head of Christ, Bruges School; formerly in the possession of King Theodore of Abyssinia, now in the possession of Sir Richard Holmes, K.C.V.O'.
[44] Gidena Mesfin Kebede and Susanne Meyer-Abich, 'A Reflection: Translocations and Changes in Perspective' (2018) 2 (2) Journal for Art Market Studies 1, 2.
[45] Ibid.
[46] Heavens, n 42, 229.
[47] See, for instance, Stephen Bell, 'From the Archive (1993): Where is the Looted Kwer'ata Re'esu, the Most Revered Icon of the Ethiopian Empire?', The Art Newspaper, 01 November 1993 <https://www.theartnewspaper.com/1993/11/01/from-the-archive-where-is-the-looted-kwerata-reesuu-the-most-revered-icon-of-the-ethiopian-empire> accessed 13 October 2025.
[48] Top Ten Most Wanted Antiquities <https://combatlootingac.maps.arcgis.com/apps/Cascade/index.html?appid=5e84e269fb42449a8478635866aa2ef7> accessed 13 October 2025.
[49] Santos, n 26.
[50] Heavens, n 42, 229.
[51] Christiana Martins, 'Onde Está o "Kwer'ata Re'esu"?', Expresso, 01 December 2023 <https://leitor.expresso.pt/semanario/semanario2666/html/revista-e/capa–e/onde-esta-o-kwerata-reesu-#Echobox=1701385418> accessed 13 October 2025.
[52] Art 2 of the Ordinance No. 321/2002 (2nd Series), 16 February 2002.
[53] Bailey, 'From the Archive (1998): How the Art Newspaper Tracked Down Ethiopia's Greatest Icon After Its Looting by a British Agent in 1868', n 24.

to the Government, recommending the acquisition of the icon and its subsequent bestowal as a gift during the Ethiopian Emperor Haile Selassie's visit to the country in 1965 but this proposition remained unfulfilled.[54] The issue is the subject of ongoing discussion in Portugal.[55] Prominent Portuguese art historians, including Elsa Garrett Pinho,[56] have advocated for its return in the face of the export restriction. Ethiopia continues to regard the icon as sacred. A replica of the icon is paraded during social occasions or difficult times like drought, war or epidemic.[57]

These calls for restitution should be considered within the broader context of developments concerning colonial cultural objects and the decolonisation of the museum sector. A significant development in these deliberations was the initiative of Joacine Katar Moreira, a member of Parliament originating from Portugal and Guinea-Bissau, who was then affiliated with the Livre party, to propose an amendment to Article 203 of Bill No. 5/XIV/1, entitled 'State Budget Bill' in January 2020. The proposed amendment pertained to the 'Program for the Decolonisation of Culture', which sought to promote the decolonisation of knowledge in educational institutions and the cultural sphere, with the restitution of colonial cultural objects included.[58] This proposal was met with significant opposition ultimately leading to its rejection by the majority.[59] The Minister of Culture, Pedro Adão e Silva, while characterising 'restitution' as an abstract idea, due to ongoing pressure, proposed the establishment of an inventory to ascertain the provenance of artefacts in museums. A total of 414 museums were approached by ICOM Portugal, of which 67 responded. Fifty-two of these suggested that they hold collections from Africa, Latin America, the Middle East, Southeast Asia and Oceania in varying quantities.[60]

Forceful opposition is also in evidence. The most notable resistance to date takes the form of a threat issued by the far-right Chega! party to bring down any government that would consider the return of colonial cultural objects or reparations for the Transatlantic Slave Trade.[61] Restitution met with similar opposition in the UK when the Great British Pac threatened to institute legal action against the UK Government and the British Museum to prevent the continuation of negotiations

[54] Pankhurst, n 31, 125. Kebede and Meyer-Abich, n 44, 4.

[55] Martin Bailey, 'Investigation by Portuguese Newspaper Reveals Grappling Between Politicians and Museums Over Future of Kwer'ata Re'esu', The Art Newspaper, 05 February 2024 <https://www.theartnewspaper.com/2024/02/05/investigation-by-portuguese-newspaper-reveals-grappling-between-politicians-and-museums-over-future-of-kwerata-reesu> accessed 13 October 2025. See also Martin Bailey, 'Kwer'ata Re'esu: The Astonishing Story of Ethiopia's Most Treasured Icon', The Art Newspaper, 06 October 2023 <https://www.theartnewspaper.com/2023/10/06/kwerata-reesu-the-astonishing-story-of-ethiopias-most-treasured-icon> accessed 13 October 2025.

[56] For a view from Portugal, see Elsa Garrett Pinho, 'O Ecce Homo Etíope (Kwir'ate Ri'isu). Uma Questão Ética, Moral e Política' (2023) Working Paper 1.

[57] Wubneh, n 34, 230.

[58] That was also one of the prepositions of the party: see sub 'iv. Decolonise Culture' (Livre 2019, 11.4). <https://partidolivre.pt/primavera-europeia/programa-do-livre-as-eleicoes-europeias-de-2019> accessed 13 October 2025. This position seems to be absent from the latest version, if one considers that Joacine Katar Moreira is no longer a member of the party.

[59] Joacine Katar Moreira and Lucas Lixinski, 'Inventorying is Reckoning: Joacine Katar Moreira Talks to Lucas Lixinski' (2023) 9 (2) Santander Art and Culture Law Review 29, 31; Lucas Lixinski, *A Research Agenda for Cultural Heritage Law* (2024) 133.

[60] Gonçalo de Carvalho Amaro and David Felismino, 'ICOM Portugal Bulletin: The Extra-European Collections' (2020) 3 (17) 125–135 <https://icom-portugal.org/2022/01/23/boletim-icom-portugal-serie-iii-n-o17-dezembro-2021/> accessed 13 October 2025.

[61] 'Ventura Threatens to Bring Down Government Over Reparations', Portugal Decoded, 13 June 2025 <https://portugaldecoded.substack.com/p/ventura-threatens-to-bring-down-government> accessed 13 October 2025.

concerning the Parthenon Marbles.[62] Angola, São Tomé and Príncipe and Mozambique have lodged requests for restitution and/or reparations against Portugal.[63] More than half of the citizens who were approached in a survey conducted in May and June 2025 in Portugal, Angola and Cabo Verde expressed support for the return of works of art by Portugal, including Portugal itself, with 54% in favour.[64] In the absence of any national policy and national legislation, a bottom-up approach can be observed. This ranges from university guidelines to various exhibitions.[65] The most notable example is the report by the University of Coimbra, titled 'Sensitive Heritage at the University of Coimbra'.[66] Published in February 2025, the report sets out a 15-point action plan concerning the restitution of colonial cultural objects. What sets this initiative apart is that the report not only recognises civilisational hierarchies but also prioritises the inventory of cultural heritage collections, emphasises provenance research and aims to initiate discussions about restitution, whether physical or digital.[67] The report draws on international experience and highlights the recent establishment and financing of the Ministry of Culture Working Group.[68] A summary of the legal dimension follows next.[69]

III. Mirror, Mirror on the Wall, Who Must be Faulted for Failing Them All?[70]

Both PubIIL and PIL have contributed directly and indirectly to the icon's looting, circulation and the obstacles in the way of its restitution to Ethiopia, namely the standard of 'civilisation' and the obstacle posed by the passage of time. The most important factors that complicate the case for the restitution are unified in their failure. They deserve further detailed treatment.

A. The Standard of 'Civilisation'

PubIIL and PIL converge in the original taking and subsequent circulation of the icon of the Christ with the Crown of Thorns.

From the perspective of PubIIL, Ethiopia, known at the time as Abyssinia, was considered to be in an indeterminate position during the nineteenth century. Ethiopia was regarded as 'semi-civilised' or, at worse, still 'uncivilised'. For instance, Lord Stanley (1799–1869), the Secretary of State for Foreign Affairs, proposed before the House of Commons in November 1867 that any 'insult from an uncivilised tribe' should be regarded as unacceptable and should be met

[62] Vivienne Chow, 'Backlash Erupts Over Right-Wing Group's Attempt to Block Parthenon Marbles Deal', ArtNet, 11 July 2025 <https://news.artnet.com/art-world/right-wing-group-great-british-pac-block-parthenon-marbles-2666826> accessed 13 October 2025.
[63] For an overview of the Portuguese experience see Lixinski, n 59.
[64] João António and António Costa Pinto, '50 Years of Independence – Portuguese Decolonisation and Its Legacies' (2025) <https://50anos25abril.pt/iniciativas/sondagem-a-descolonizacao-portuguesa/> accessed 13 October 2025.
[65] One indicative example is the ongoing exhibition, 'Colonialism in Africa: Myths and Realities', at the National Museum of Ethnology (29 October 2024 to 02 November 2025).
[66] Walter Rossa et al, 'Sensitive Heritage at the University of Coimbra' (February 2025) <https://www.uc.pt/site/assets/files/2257723/sensitive_heritages_at_uc_en.pdf> accessed 13 October 2025.
[67] Ibid, 5 and 7.
[68] Ibid, 22–23.
[69] Ibid, 8–9.
[70] Borrowed from Jacob Grimm and Wilhelm Grimm, *Little Snow-White (Tale 53)* (1812).

with punishment.[71] This line of argument gained strength from the supposed 'corrupted' form of Christianity, as a consequence of Ethiopia's geographical isolation due to its proximity to Muslim territories.[72] Ironically, earlier treaty practice establishing diplomatic relations between Ethiopia and Great Britain was 'conveniently' forgotten.[73]

The binary thinking that prevailed in European international law, separating the 'civilised Self' from the 'uncivilised Other', had important implications. The term has come to denote the cultural heritage that can be recognised as such and which can be protected and restored.[74] Not included within the circle of 'civilised' states, Ethiopia did not benefit from such advantages. Conversely, its cultural, historical and sacred cultural heritage was fantasised as '*cultura nullius*' purportedly belonging to no one and, as such, amenable to looting, seizure and collection.[75] Evidence of this double standard can be found in the British 1868 Military Regulations. This prohibition on looting was only invoked in instances where the opponent was deemed to be sufficiently racially and culturally 'civilised'.[76] This idea effectively transformed cultural heritage such as 'Christ with the Crown of Thorns' into cultural commodities, which, in principle, could be seized by Britain under its domestic law and by the dominant standards obtaining in international law.

Ideas of racial exclusion, such as those supported by the amorphous legal standard of 'civilisation', were not embedded only in PubIIL; they were mirrored in PIL by the territoriality factor or mechanism of state sovereignty and the personal connecting factors of domicile and nationality. Borrowing the vocabulary utilised in the PubIIL sphere, Ethiopia was considered to be deprived of the 'blessings of civilisation' by PIL, and its law was excluded from application when its potential application as foreign law presented itself. With Ethiopia being outside of the reach of 'civilisation', no 'true' conflict could arise, according to this Eurocentric conception. This was because the law of the Ethiopian 'Other' lacked the character of law or, at best, was regarded as inherently 'inferior' to the European international one.[77] Not accidentally, the 'uncivilised Other' was deliberately excluded from the early conferences that considered the codification of PIL issues, a practice that bears a striking resemblance to that observed in the PubIIL.[78] In England, Albert Venn Dicey was among the most prominent figures in the field of PIL. A section in his classic treatise titled 'Law Governing Acts Done in Uncivilised States', exhibited these racial and colonial undertones. Noting the ambiguity of the term 'civilisation', he argued that this was confined to European powers and the colonies under their control. Countries like Ethiopia and China were not considered to be 'civilised'.[79] Further examples include Germany.[80] How these ideas of double

[71] House of Commons, Debate 26 November 1867, Volume 190, Column 212.
[72] Holland and Hozier, n 37, 5 and 8.
[73] See the Treaty of Amity and Commerce Between Great Britain and Shewa, Angollah, 15 November 1841 and the Treaty of Friendship and Commerce Between Great Britain and Abyssinia, Ennowga, 2 November 1849. With regard to the relations between Portugal and Ethiopia, evidence of diplomatic relations can be traced back to at least the 16th century.
[74] Andreas Giorgallis, 'The Racial Regime of International Cultural Heritage Law' (2025) 31 (8) International Journal of Heritage Studies 1028, 1031.
[75] Ibid, 1032–1033.
[76] Queen's Regulations and Orders for the Army (Her Majesty's Stationery Office 1868), Volume 2, 186.
[77] More broadly, Roxana Banu, *Nineteenth Century Perspectives on Private International Law* (2018) 131.
[78] See, indicatively, the Convention Relating to Civil Procedure of 14 November 1896.
[79] Lord Dicey, *A Digest of the Law of England with Reference to the Conflict of Laws* (1908) 66–67.
[80] German-Jewish jurist Karl Neumeyer (1869-1941) advanced the argument that no 'real' conflict of laws could arise between Germany and African nations, on the grounds that they were not recognised as such before the colonial era – see in general Karl Neumeyer, 'Privatrechtliche Mischbeziehungen Nach Deutschem Kolonialrecht' (1913) 6 Zeitschrift für Völkerrecht 125.

standard might take a new form in PIL, bearing in mind Europe's colonial past, is discussed further in Section IV. The question of the status of the 'Christ with the Crown of Thorns' within the framework of Ethiopian practices was of little legal interest. In any event, its restitution would have run counter to the public policy of 'civilised' European nations.[81]

The exclusion of the 'uncivilised Other' was realised also through the nationality of private individuals. Dicey argued that private individuals who obtained residence in an 'uncivilised' state and became domiciled there, did not lose their 'civilised' status or their personal law. Residence in an 'uncivilised' state does not change domicile.[82] Conversely, the 'civilising' status persists so that these private individuals became, in a sense, islands of 'civilisation'.[83] The early Ethiopian-British treaty practice exemplifies this phenomenon. The 1849 Treaty of Friendship and Commerce Between Great Britain and Abyssinia not only acknowledged the commercial rights and privileges that British subjects had previously enjoyed under the terms of earlier treaties (Article IV), but also established a British consular jurisdiction for disputes between British subjects and British subjects and Ethiopian or any other foreign powers' individuals (Article XVII).[84] These provisions only functioned non-reciprocally, which reflected prevailing power dynamics and asymmetries. Ethiopia was by no means the only instance in which such clauses found application.[85]

One of the ways in which PIL could be used to silence the illicit trafficking of colonial archaeological objects is evident from a court case in colonial Cyprus, *Regina v. Cesnola (1878)*.[86] The case was decided when the island transitioned from under Ottoman rule (1571–1878) to the British Crown (1878–1960). Alessandro Palma di Cesnola (1839–1914) was the younger brother of Luigi Palma di Cesnola (1832–1904) who served as the American Consul of the island. Luigi subsequently became the inaugural Director of the Metropolitan Museum of Art (MET) in New York. Estimates suggest that, over the course of his tenure in Cyprus between 1865 and 1877, he was responsible for the export of approximately 35,000 antiquities from the island.[87]

Alessandro Palma di Cesnola endeavoured to follow in his older brother's footsteps, but did not achieve a comparable degree of success. Legal proceedings arose in respect of unlawful excavations that had taken place at the villages of Enkomi and Ormidia, and the antiquities were seized. Alessandro, who passed as an Italian-American (a status to be clarified below) attempted circumvent sanction in the litigation at the Medjliss Davi (the then District Court) of Larnaca. Alessandro contested the jurisdiction of the Court and asserted he fell outside it based on his nationality as an

[81] For Great Britain see, for instance, Lord Dicey, n 79, 724.

[82] Ibid.

[83] More broadly see Karen Knop, 'Lorimer's Private Citizens of the World' (2016) 27 (2) European Journal of International Law 447, 458.

[84] On this point see Tamiru Wondimagegnehu, 'Tewodros II and the Regime of Exra-Territoriality Under the Anglo-Abyssinian Treaty of 1849' (1989) 14 (1) Journal of Ethiopian Law 91, 96–98. It is interesting to note that the two official versions, in English and Amharic, differ importantly on this point. The Amharic version emphasises the inclusion of a Consul or an officer appointed by the Ethiopian Emperor.

[85] See, for instance, in relation to China, Alex Mills, *The Confluence of Public and Private International Law: Justice, Pluralism and Subsidiarity in the International Constitutional Ordering of Private Law* (2009) 35–36; Roodt, n 17, 48.

[86] Medjliss Davi (District Court) of Larnaca, Regina v. Cesnola (1878) (on file with the author – courtesy of Dr. Nicholas Stanley-Price).

[87] Nicholas Stanley-Price, 'Illicit Excavation: The Trial of Alessandro Palma di Cesnola in Cyprus in 1878' (2018) 98 The Antiquaries Journal 297, 297.

American citizen,[88] his diplomatic status as Vice-Consul in Paphos and his acting role as Consul in Cyprus for the United States of America (henceforth: US)[89] as well as the existing Capitulation Agreement between Great Britain and the Ottoman Empire.[90] He did not deny that excavations had taken place but argued that others engaged in similar practices, which ceased only with the arrival of the English to the island.[91] In his writings following the trial, he suggested that he had applied for a firman from the High Porte in Constantinople. However, he claimed that he received no response, so he continued regardless.[92]

The Court dismissed these contentions on 14 September 1878 and imposed a fine of four liras in accordance with Article VII of the 1874 Ottoman Antiquities Law. The antiquities were confiscated under the same provision.[93] Recent historical work has noted that Alessandro was neither a US citizen nor did he possess diplomatic status. Apparently these claims were nothing but 'wishful thinking'.[94] The same holds for the Capitulation Agreement which was no longer in force by the Supplementary Agreement of 14 August to the 1878 Cyprus Convention.[95] Sir Garnet Wolseley (1833–1913), the first High Commissioner to Cyprus, remitted this fine in due course.[96] PIL, with tentacles extending to PubIIL, had the potential to silence cases concerning unlawful excavation and illicit trafficking based on state sovereignty and the nationality and status of individuals in private law. In the case of 'Christ with the Crown of Thorns', this was achieved through a combination of factors, including the non-recognition of Ethiopian law, customs and practices in their entirety, the utilisation of instruments with a legal appearance such as the earlier bilateral British-Ethiopian treaty practice and/or the personal status of individuals like Holmes.

B. The Obstacle Posed by the Passage of Time

Not only were both fields responsible for the moment the icon of 'Christ with the Crown of Thorns' was first taken, paved by the PubIIL's standard of 'civilisation' and subsequently facilitated by PIL, but they precipitated its circulation and non-restitution. In their dominant operation the two disciplines converge in their failure to overcome the obstacle posed by the passage of time.

The PubIIL principle of intertemporal law is well-known. The principle is famously articulated in the seminal case of the *Island of Palmas (1928)*.[97] Its first limb stipulates that the assessment of a legal situation must be conducted on the basis of the law as it stood at the time.[98] The re-emergence of racial bias, firmly entrenched in the legal standard of 'civilisation', is unsurprising. This points to

[88] Foreign Office Correspondence 1878–1879, Defence, 179: 'as an American and a man, I protest against this Tribunal generally …'.
[89] Foreign Office Correspondence 1878–1879, No. 228, 223. For the same reason, he wrote a letter of complaint to the US Consul in Beirut – Foreign Office Correspondence 1878–1879, Inclosure to No. 14, 186.
[90] Stanley-Price, n 87, 310.
[91] Foreign Office Correspondence 1878–1879, Defence, 180.
[92] Alessandro Palma di Cesnola, *Salaminia (Cyprus): The History, Treasures, & Antiquities of Salamis in the Island of Cyprus* (1884) xviii.
[93] Foreign Office Correspondence 1878–1879, Defence, 180.
[94] Stanley-Price, n 87, 311.
[95] Ibid, 310. Capitulation agreements such as the Capitulation Treaty of Alexandria (1801) were instrumentalised to legalise the looting of Rosetta Stone – For more, see Stahn, n 18, 92.
[96] See e.g. House of Commons, Island of Cyprus – Mr di Cesnola, Volume 243, 12 December 1878, Column 637.
[97] Island of Palmas Case (Netherlands v. United States of America), 04 April 1928, Reports of International Arbitral Awards, Volume II.
[98] Ibid, par. 845. Its second limb is analysed in the next section.

the application of the dominant European International Law during that period.[99] In the case of the icon, the 1868 Military Regulations (see, 'A' above) are applicable, bringing the appropriation of the icon into full alignment with the notion of *cultura nullius*. In accordance with the prevailing 'civilisation' standards, its taking would have been deemed lawful or would have been met with legal indifference at the very least.[100]

Attempts to apply the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (henceforth: 1970 UNESCO Convention) and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (henceforth: 1995 UNIDROIT Convention) are of particular interest from the perspective of former colonies and countries that were exploited during the colonial era, such as China and Iraq. Such endeavours were met with staunch resistance, with certain states asserting that the retroactive application of the conventions was utterly unacceptable.[101] The UK, the country responsible for the original looting and Portugal, where the icon is currently located, are among these countries that objected.

In as much as the passage of time poses an obstacle to the successful restitution of the icon to Ethiopia under the cultural heritage conventions, PIL is implicated in the application and interpretation of statutes of limitations and export prohibitions. Each of these is analysed in turn.

Statutes of limitation are pivotal in the initiation of legal proceedings as they establish a defined timeframe within which such proceedings can be lodged. It is necessary to examine the relevant legislation in Portugal, given that is the icon's current location. As a civil law legal system, it favours *bona fide* acquisition.[102] In accordance with Article 1299 of the Portuguese 1967 Civil Code and in the absence of specific provisions for cultural heritage, the 'juridical framework of circulation'[103] is applicable, and ownership is granted after possession for three years. In the absence of good faith, this occurs after a period of six years. Article 527 of the 1867 Portuguese Civil Code, which was applicable in 1950 when the transaction took place, provided for acquisitive prescription when more than ten years had elapsed, even in cases involving bad faith. The assertion that the icon of 'Christ with the Crown of Thorns' was obtained in good faith is questionable, under the contemporary Civil Code as well as under the previous one. In 1950, Rui Santos discreetly procured the icon at Christie's auction, exhibiting a profound cognisance of its provenance and historical context. Nine years prior to the auction, he authored an academic publication on the subject where he advanced the Portuguese origins of the icon.[104] The icon has now been in Portugal for 75 years. The Group on Property Law of the European Group of Private International Law (GEDIP) undertook work on the applicable law in cases of stolen or illegally exported cultural objects. In its proposal, the group suggested that time limitations should not begin until the owner has become or should reasonably have become aware of the situation that would prompt a

[99] Stahn, n 18.
[100] Giorgallis, n 74.
[101] Stahn, n 18, 363. It deserves to be noted that both treaties contain a clause suggesting the possibility of agreements for objects taken before they came into force, leaving open the question of their legitimacy – Art 15 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and Art 10 (3) of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.
[102] For the right to private property including its transfer see Art 62 (1) of the Portuguese 1976 Constitution.
[103] Stefano Manacorda, 'Criminal Law Protection of Cultural Heritage: An International Perspective', in S. Manacorda and D. Chappell (eds), *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property* (2011) 17, 25.
[104] Santos, n 26.

reasonable person to consider legal action.[105] Similar efforts appear to be ongoing within the European Association of Private International Law's Working Group on International Property Law. Its most recent meeting took place in Antwerp between 22 and 24 May 2025 and the final outcome is awaited.[106]

The situation is further complicated by the fact that Portugal does not permit any form of export or loan of the icon outside of the country without a licence, which renders the icon quasi-inalienable.[107] Neither the Portuguese Basic Law on Cultural Heritage (No. 107/2001), the Law 47/2004 on the Framework Law of Portuguese Museums, nor the Law of 2016/No. 30 on the Regime for the Restitution of Cultural Goods that Have Unlawfully Left the Territory of a Member State of the European Union, offers assistance, and the same applies to their preparatory work.[108] Article 69 (6) of the Portuguese Basic Law on Cultural Heritage (No. 107/2001) confirms the 2002 decree by positing that a restitution action cannot be initiated 'when the claimed cultural asset constitutes an element of Portuguese cultural heritage', as the icon of 'Christ with the Crown of Thorns' does. The recent report of the University of Coimbra on classified objects corroborates this hypothesis although, the report does not refer to the icon in express terms. The circumstances surrounding unclassified objects may differ.[109] While many states limit de-accession of cultural heritage,[110] this stipulation is unique to Portugal.

IV. Making the Case for a Coordinated Approach of PubIIL and PIL for Colonial Cultural Objects

Having discussed how PubIIL and PIL converge and mirror each other in hindering the restitution claims in respect of cultural objects unethically acquired during the colonial era, and specifically also in respect of the icon of 'Christ with the Crown of Thorns', Section VI explores whether the two discplines could work together to achieve restitution.[111] In other words, it calls for an approach that transcends the international/national and public/private divides that have long walled in international cultural heritagelaw. As in Section III, this section starts with the standard of 'civilisation' and then moves on to examine the impediment of the passage of time from both sides of the garden wall.

A. The Standard of 'Civilisation'

The pervasive influence of the standard of 'civilisation' in contemporary international (cultural heritage) law is increasingly being subject to critical scrutiny from scholars and researchers alike. This

[105] Art 8 (3) of the European Group for Private International Law, The Law Applicable to Rights in Rem in Corporeal Assets (Paris Meeting, 29 September 2024).

[106] European Group for Private International Law, Group of Property Law <https://eapil.org/what-we-do/working-groups/group-on-property-law/> accessed 13 October 2025.

[107] Art 2 of the Ordinance No. 321/2002 (2nd Series), 16 February 2002.

[108] See, for instance, for a discussion of the Law of 2016/No. 30 – Carla Barroso, Leonor Calvão Borges and Margarida Cabral, 'Restitution of Cultural Property – International Framework' (July 2020) <https://ficheiros.parlamento.pt/DILP/Publicacoes/Temas/75.RestituicaoBensCulturais/75.pdf> accessed 13 October 2025.

[109] Rossa et al, n 66, 8.

[110] See, most notably, Section 5 (1) of the British Museum Act (1963) which only permits de-accessioning in very limited circumstances.

[111] For a similar approach see Roodt, n 17, 149.

assertion has recently been made in extra-legal disciplines. Adopting a *long-durée* historical approach, international relations theorist Luke Kemp argues that the concept has historically been used as a tool of domination and has brought us no closer to eradicating inequality today. He proposes that it deserves to be eradicated.[112]

Eurocentric assumptions that undermine the sovereignty of non-European states have been rendered obsolete in several cases before the International Court of Justice (henceforth: ICJ)[113] and national courts.[114] The monopolisation of European international law is no longer considered appropriate for colonial cultural objects. The 2021 German Guidelines on colonial cultural objects recommend that European standards must be considered in conjunction with other legal non-European frameworks within the context of legal pluralism.[115] However, the most recent guidelines, published by the University of Coimbra for the university community, do not follow a body of historical scholarly work that took account of the supposedly 'uncivilised Other' at a time when Eurocentric assumptions were predominant. The *ouvré* of Prussian lawyer of administrative law, Alexander von Wussow, is an example of this work. His 1885 publication 'The Preservation of Monuments in the Cultural States of the Present' does not confine the analysis to the familiar European landscape but considers legislation from around the world, including that of Egypt, Mexico, Brazil, the US, China, Japan and the Ottoman Empire.[116]

Submissions made by several African countries to the 2025 Committee on the Elimination of Racial Discrimination's Proposed General Recommendation Regarding Reparations for the Historical Injustices From the Chattel Enslavement of Africans and the Ensuing Harms and Crimes to People of African Descent underscore the racial foundations that structure international law.[117] The 2025 African Union Year of Justice for Africans and People of African Descent highlights the importance of racial healing as a fundamental component of addressing historical injustices. Nonetheless, further work is needed to dismantle the racist construction of *cultura nullius*.

Historical research has demonstrated that sacred objects, including the icon 'Christ with the Crown of Thorns', were accorded special protection in accordance with Ethiopian standards prior

[112] Luke Kemp, *Goliath's Curse: The History and Future of Societal Collapse* (2025) 5.

[113] International Court of Justice, Right of Passage Over Indian Territory (Portugal v. India), 12 April 1960, paras. 37–39 (on the validity of a treaty between the supposedly 'uncivilised' Maratha Empire and the 'civilised' Portuguese Empire during the 1700s, which the ICJ confirmed). See also International Court of Justice, Sovereignty Over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore), 23 May 2008, par. 52.

[114] Court of Appeal of Brussels, Decision of 02 December 2024, 2022/AR/262. The forcible separation of five *Metis* descendants of mixed European and African ancestry from their families between 1948 and 1952, when the colonial period of Congo was at a high point, was determined to have constitute a crime against humanity at the time, at par. 41. Plaintiffs were awarded €50,000 each as compensation for moral harm inflicted by the Belgian colonial racial policies, at par. 55.

[115] Ahrndt et al, n 3, 167.

[116] Alexander von Wussow, *Die Erhaltung der Denkmäler in den Kulturstaaten der Gegenwart* (1885) 231–242.

[117] See, for instance, Permanent Mission of the Kingdom of Morocco, 17 March 2025, 2 <https://www.ohchr.org/sites/default/files/documents/hrbodies/cerd/cfis/gr-reparations/subm-cerd-general-recommendation-sta-kingdom-morocco.pdf?> accessed 13 October 2025. Opposition emanated from Germany, whose position underlined the 1965 International Convention on the Elimination of All Forms of Racial Discrimination's temporal and territorial limits – German Federal Foreign Office, German Comments Regarding the Call for Input to CERD General Recommendation on Reparations for the Historical Injustices From the Chattel Enslavement of Africans, and the Ensuing Harms and Crimes to People of African Descent, 14 February 2025, 1–2 <https://www.ohchr.org/en/calls-for-input/2025/call-inputs-cerd-general-recommendation-regarding-reparations-historical> accessed 13 October 2025.

to, during and following the 1867/8 Expedition.[118] The icon was requested back from the Funj Sultanate a century prior to its taking in 1868, and again in 1872 after the looting of the fortress of Maqdala.

The restoration of the cultural agency of Ethiopia, as upheld by the Ethiopian legal order, must be upheld once more. This could be achieved if the insights offered by PubIIL were permitted to complement a non-mechanical approach of PIL that keeps in check the colonialist tendencies perpetrated by private entities and individuals. PIL revolves around meaningful engagement with the figure of '*ξένος/xenos*' ('foreigner' in Greek).[119] Such an approach has the potential to demonstrate how PIL respects foreign law, translating and operationalising rather abstract ideas at an international level into practice at a domestic level. It may neutralise the 'taboo' that refuses recognition of foreign public laws in earlier UK cases.[120]

In order to circumvent the reinforcement of past Eurocentric bias, it is unhelpful and counterprodutive to impose one's values.[121] Eurocentric assumptions regarding the nature of law should be treated with care, as they will likely require a reappraisal.[122] In an Ethiopian setting, for example, it is highly restrictive to confine the concept of law to written materials alone. Historically, the Ethiopian legal system was characterised by an intricate network of written laws, customary practices and oral traditions. The exclusion of some of these elements would serve to reinforce the very bias that PIL is attempting to circumvent.

Respect for the rules and practices which govern Indigenous communities is endorsed by both soft law with regard to colonial cultural objects[123] and preliminary hard legislation. The 2024 Draft General Act on Private International Law for Colombia, while encompassing both external and internal conflict of laws, appears to demonstrate an inclination towards this orientation.[124] Article 68 (3) of the relevant legislation stipulates that in the event of the restitution of cultural heritage of significant importance to Indigenous Peoples, its ultimate fate shall be 'governed by the rules of that people or community'. When considered in its true historical context and liberated from Eurocentric thinking, PIL possesses the capacity to unlock hitherto unaccounted knowledge systems and spheres of law, just as the status of sacred objects from an Ethiopian standpoint may do in PubIIL. Scholars of PIL have long emphasised the benefits of applying the principle of *lex originis* (the law of the country of origin) instead of *lex rei sitae* (the law of the place where the property is located at the time it was removed or was lost).[125] In the context of the icon, this would correspond to the Ethiopian legal setting.

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[118] See, for instance, Guillaume Lejean, *Théodore II: Le Nouvel Empire d'Abyssinie et les Intérêts Français dans le Sud de la Mer Rouge* (1865) 12. For an overview on the protection of the 11 Ethiopian Tabots and more broadly sacred cultural objects see Andreas Giorgallis, The *11 Ethiopian Tabots and Their Restitution*. (Ph.D. Thesis, University of Glasgow, 2025) Ch. 6.

[119] Ralf Michaels, 'Private International Law as an Ethic of Responsivity', in V. Ruiz Abou-Nigm and M. B. Noodt Taquela (eds), *Diversity and Integration in Private International Law* (2019) 11, 27.

[120] See, for instance, the Attorney-General of New Zealand v Ortiz [1982] 3 All ER 432; King of Italy v. Marquis Cosimo de Medici Tomaquinci 34 TLR 623 (Ch 1918).

[121] Verónica Ruiz Abou-Nigm and Ralf Michaels, 'Towards Private International Law for Everyone', in X. Kramer and L. C. Piñeiro (eds), *Research Methods in Private International Law: A Handbook on Regulation, Research and Teaching* (2024) 246, 259.

[122] Roodt, n 17, 8–9.

[123] See, for instance, Ahrndt et al, n 3, 167.

[124] Art 68 of the 2024 Draft General Act on Private International Law for Colombia.

[125] At an international level see Art 2-3 of the Institute of International Law, The International Sale of Works of Art From the Angle of the Protection of the Cultural Heritage (Basel, 1991). At a national level see the recent codifications in Hungary (Art 47 of 2017 Hungarian Private International Law (No. XXVIII)) and Monaco (Art 94 of the 2017 Private International Law Act (No. 1.448)). For more on *lex originis* see Derek Fincham, 'How Adopting the Lex Origins Rule Can Impede the Flow of Illicit Cultural Property' (2008) 32 (1) Columbia Journal of Law and the Arts 111; Tamás Szabados, 'In Search of the Holy

Caution is necessary, however. Firstly, it is important not to homogenise the 'Other' in a single unit, as the desired outcome will not be achieved if this is attempted. Secondly, the acknowledgement of the 'Other' can rapidly evolve into an equality fallacy that would engender adverse outcomes. The UK's Court of Appeal ruling in the *Sophocleous case (2018)*[126] is a prime example of this phenomenon. Concerned with atrocities committed between 1956 and 1958 in colonial Cyprus, the Court of Appeal overturned the lower court's decision which had characterised English law as 'superior' and Cypriot law as 'inferior'.[127] The Cypriot law could be made and unmade by the British Crown. The Court of Appeal structured colonial Cypriot law on an equal footing with that of England, France or the US.[128] However, absolving the UK from responsibility under the double actionability rule in PIL based on supposed equality is not necessarily beneficial.[129] A similar argument about Great Britain's PIL and its colonies appears in Dicey's commentary dividing the empire into smaller 'law districts'.[130] The Dutch approach steers clear of this trap when discussing the issue of applicable law in cases of colonial atrocities.[131]

Continuities of a quasi-analogous double standard can be discerned in contemporary PIL in the European Union (henceforth: EU). Although the scope of EU PIL is universal,[132] the recognition of judicial rulings within the EU, including rulings on the restitution of colonial cultural objects, is harder to achieve for third states than for EU member states.[133] Proceedings in former colonies or victims of colonial exploitation, such as Colombia and China, provide compelling evidence of the challenges involved.[134] A hypothetical claim by Ethiopia to recognise a favourable ruling concerning 'Christ with the Crown of Thorns' before the Portuguese courts would also be treated differently from a claim pursued by member states of the EU. The adoption of the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters ratified by Portugal on 29 October 2022, mitigates the issue to some degree, but Ethiopia has not ratified it.The situation with regard to other former Portuguese colonies may differ considerably due to bilateral treaties.[135] Article 980 (f) of the Portuguese 1967 Civil Code suggests

Grail of the Conflict of Laws of Cultural Property: Recent Trends in European Private International Law Codifications' (2020) 27 (3) International Journal of Cultural Property 323.

[126] Athanasios Sophocleous & Ors v. Secretary of State for the Foreign and Commonwealth Office & Secretary of State for Defence (2018) EWCA Civ 2167.

[127] Athanasios Sophocleous & Ors v Secretary of State for the Foreign and Commonwealth Office & Secretary of State for Defence [2018] EWHC 19 (QBD) par. 188.

[128] Athanasios Sophocleous & Ors v. Secretary of State for the Foreign and Commonwealth Office & Secretary of State for Defence, n 126, par. 40. For a commentary see Roodt, n 16, 109.

[129] Athanasios Sophocleous & Ors v Secretary of State for the Foreign and Commonwealth Office & Secretary of State for Defence, n 127, par. 197.

[130] Lord Dicey, n 79, 71.

[131] District Court of The Hague, Stichting Komite Utang Kehormatan Belanda v. Netherlands, Trial Judgment, LJN: BS8793, 14 September 2011, par. 4.4.

[132] Art 2 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the Law Applicable to Contractual Obligations (Rome I); Art 3 of the Council Regulation (EU) 1259/2010 of 20 December 2010 Implementing Enhanced Cooperation in the Area of the Law Applicable to Divorce and Legal Separation (Rome III).

[133] See Art 36 (1) of the Council Regulation (EC) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Recast).

[134] See, for instance, Roodt, n 16, 81–83 for an analysis of the Chinese litigation of Oscar van Overeem, Design & Consultancy Oscar van Overeem B.V. v Yangchun Village and Dongpu Village Committees, Fujian Province Higher People's Court, 2021 Min Min Final No. 302, 19 July 2022.

[135] For instance, see the Agreement on Legal and Judicial Cooperation Between the Portuguese Republic and the Republic of Cabo Verde (2003).

that foreign judgements that are contrary to Portuguese public policy should not be recognised. Double standards are at work not only in the regional organisation of the EU but also in the Organization of American States' (OAS) 1979 Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards. It is the historical colonial complicity of PIL, through its double standards in terms of territoriality and/or personal factors, that enables differential treatment today.

B. The Obstacle Posed by the Passage of Time

There is scope for convergence between PubIIL and PIL on temporality whether in terms of intertemporal law and/or time limitations for the restitution of 'Christ with the Crown of Thorns' and, more broadly, colonial cultural objects.

From a PubIIL perspective, one potential approach to addressing the prevailing operation of the intertemporal law is to foreground its neglected second limb which holds that events should also be evaluated in accordance with 'the evolution of law'.[136] In light of this consideration, the prevailing legal framework would be applicable and legal systems as they used to be would be superseded. Guidelines for collections of colonial cultural objects in cultural institutions in Europe that have already adopted such an approach include the 2021 Dutch Guidelines on colonial cultural objects. They call into question the continued relevance of the Eurocentric legal standards of the past. They favour the application of contemporary legal standards in view of structural racism and discriminatory practices fostered by previous frameworks.[137] In other words, the extent of the double standards and inequality between the local population and the European colonial powers, in this instance, the Netherlands, suggests that contemporary standards should be applied rather than those of the past. In addition, customary international law and *jus cogens* also enrich contemporary standards. One approach that could be adopted is to consider the contemporary *jus cogens* status of non-discrimination and/or the condemnation of apartheid, as recently highlighted in the 2022 Report of the International Law Commission.[138] It could be argued that the contemporary application of these racial standards to the icon of 'Christ with the Crown of Thorns' continues to separate the 'uncivilised' Ethiopian 'Other' from the 'civilised' British and European 'Self', and violates the contemporary *jus cogens* status of the non-discrimination principle.

In the context of time limitations, the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity at the international level along with the 1974 European Convention on the Non-Applicability of Statutory Limitation to Crimes Against Humanity and War Crimes (henceforth: 1974 European Convention) are of particular relevance. Both advocate for the relaxation of time limitations in the event of such crimes.[139] In instances where the courts of the Netherlands, a signatory to the 1974 European Convention, have been confronted with the issue of time limitations, the rationale for sidestepping statutes of

[136] Island of Palmas Case (Netherlands v. United States of America), n 97, 845.
[137] Gonçalves-Ho Kang You et al, n 4, 60.
[138] United Nations, Draft Conclusions on the Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens), With Commentaries (2022), UN Doc. A/77/10, p. 89.
[139] Art I of the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity; Art 1 of the 1974 European Convention on the Non-Applicability of Statutory Limitation to Crimes Against Humanity and War Crimes.

limitation was located in these instruments.[140] Portugal has not ratified any of these conventions. Elsewhere, significant developments have occurred addressing more general historical injustices. For instance, in April 2025, the High Court of South Africa delivered a judgment in a case involving the crime of apartheid, denying the applicability of any statutes of limitation, despite the fact that nearly four decades had elapsed since the crime was committed.[141] Interestingly, South Africa is not a party to the international convention, yet the court stated that this position reflects customary international law[142] and is therefore binding on all states, irrespective of whether they have consented or not. The time factor was treated in a similar way in other international instruments,[143] national case law[144] and legislation.[145]

Much like PubIIL, PrIL possesses the capacity to engender an alternative 'chronosophy' to the linear Western timeframe.[146] In contrast to PubIIL, in the domestic Portuguese context, time limitations might not necessarily be subject to domestic law, but PrIL might offer an alternative route. If a value judgement is adopted, building on the previous subsection concerning the denial of racial connotations, two options are available. Should a Portuguese court determine the applicability of Ethiopian law in this particular case, it could be contended that the icon of 'Christ with the Crown of Thorns' was once considered inalienable and therefore imprescriptible under the prevailing Ethiopian customs, practices and laws of the day. The request for the icon in 1872 and its return a century prior from the Funj Sultanate testify to this.[147] Consequently, the icon should not be seen as being subject to the conventional rules of commerce but rather part of the 'juridical framework of exception'.[148] This would be consistent with earlier Ethiopian legislation that does not appear to impose any time limitations in cases pertaining to restitution of cultural objects that reside abroad.[149] Recent changes made to Chinese law express this principle very clearly. Article 81 (2) of the 2024 amendment of the Cultural Relics Protection Law of the People's Republic of China underscores that no time

[140] See, for instance, Hague Court of Appeal, Children of Executed Men in South-Sulawesi v The Netherlands, Case No. 200.243.525/01, 01 October 2019, par. 15.2 – for a commentary see Carsten Stahn, 'Reckoning with Colonial Injustice: International Law as Culprit and as Remedy?' (2020) 33 (4) Leiden Journal of International Law 823, 833.
[141] High Court of South Africa, State v Mfalapitsa and Rorich, Case No. SS70/2021, 14 April 2025, paras. 67–83.
[142] Ibid, par. 77.
[143] See, for instance, Art 6 (6) of the 2019 Draft Articles on the Prevention and Punishment of Crimes Against Humanity.
[144] For the UK, see Mutua & Ors v The Foreign and Commonwealth Office [2012] EWHC 2678 (QB). For South Korea, see Seoul High Court, Decision 2021Na2017165, 23 November 2023.
[145] In the United States, the 2016 Foreign Cultural Exchange Jurisdictional Immunity Clarification Act has retroactive application for objects with problematic provenance that were loaned to US institutions and are dated from 1900 onwards – see further Andreas Giorgallis, 'The Potential of the US Courts to Adjudicate Restitution Claims Involving Colonial Cultural Objects' (2022) 8 (2) Santander Art and Culture Law Review 231. Retroactive application can be found in the adopted Belgian Bill, which is applicable from 26 February 1885 (the date of the Berlin Conference Act) until the independence of the Belgian colonies – Art 3 (2) of the Bill of 03 July 2022 Recognising the Alienability of Goods Linked to the Belgian State's Colonial Past and Determining a Legal Framework for Their Restitution and Return, 28 September 2022, No. 2022042012. The proposed French legislation covers the period between 10 June 1815 (the day after the signing of the Final Act of the Congress of Vienna) and 23 April 1972 (the day before the 1970 UNESCO Convention came into force) – Bill on the Return of Cultural Property From States that Have Been Deprived of It as a Result of Illicit Appropriation, 23 July 2025, No. 409828, paras. 1 and 13.
[146] Roodt, n 17, 26, 40–41.
[147] Giorgallis, n 118, Ch. 6.
[148] Manacorda, n 103, 73.
[149] Art 26 (1) of the Research and Conservation of Cultural Heritage Proclamation No. 209/2000.

limitations apply in such cases.[150] Clause 7 of the 2024 Qingdao Recommendations advocates for the relaxation of time limitations as well. Whenever Chinese law is the applicable law in transborder litigation, this principle can apply. Unfortunately, Ethiopian laws make no express reference as Chinese law does.

A second scenario that could be considered is the utilisation of the English legal framework in the assessment of the case. In contradistinction to the legal framework of civil law jurisdictions, English law does not protect good faith. In accordance with the *nemo dat* rule, an individual is prohibited from passing a good title if she herself lacks good title.[151] Conversely, the transaction itself is considered defective irrespective of subsequent transactions in the chain. In the *City of Gotha case (1998)* decided in the UK, Justice Moses observed that time limitations with regard to the recovery of Wtewael's 'The Holy Family with Saints John and Elizabeth and Angels' had not elapsed.[152] If this approach is employed, the legitimacy of Holmes' initial taking of 'Christ with the Crown of Thorns' along with the subsequent transactions that have taken place, may be subject to scrutiny. According to the Article 22 (1) of the 1967 Civil Code, the foreign law provisions designated by Portuguese choice-of-law rules do not apply if they violate the Portuguese public policy.

V. Conclusion

The article examines some of the cardinal meeting points between PubIIL and PIL in transborder claims involving colonial cultural objects, and more specifically, the claim involving the icon of 'Christ with the Crown of Thorns'. This claim is positioned within and outside the public and private, the national and the international spheres; and the contestation of where the icon belongs, draws attention to material/immaterial, public/private and national/international intersections. It is claimed to possess both European and Biblical origins, and to depict the development of Ethiopian art as a venerated symbol of Ethiopian Orthodox Tewahedo faith as well as Catholic Renaissance painting, once in the possession of the royal family and subsequently in private hands, emblematic of Ethiopian imperial sovereignty as well as a component of Portuguese national cultural heritage.

This article also demonstrates how both PubIIL and PIL work hand-in-glove to validate the initial taking of the icon, promote its commercialisation, and relativise the significance of Ethiopia's restitution claims. Making the case for a coordinated approach, the article shows the restitution of the icon is achievable if both disciplines were to collaborate. Interrogating both disciplines makes it clearer that rigid binary thinking does not support restitution of colonial cultural objects that have complex histories; instead, it is constructive to problematise such phenomena. These disciplines have functioned in isolation for far too long, and their relative separateness enabled the causes of colonialism to fester. Colonial cultural objects are thus not exclusively public, private, international or national in nature; rather, they are all and simultaneously none of these. The co-existence of publicness, privateness, international and national must be harnessed in order to achieve their restitution.

[150] Art 81 (2) of the Chinese Order of the President of the People's Republic of China No 35. Cultural Relics Protection Law of the People's Republic of China (2024).
[151] Section 21 (1) of the 1979 Sale of Goods Act.
[152] City of Gotha and Federal Republic of Germany v. Sotheby's and Cobert Finance SA [1998] QBD No. 1993/C/3428 & 1997/G/185 – for a commentary see Roodt, n 16, 102–103.

The argument for a coordinated approach between the public and private realms and between national and international actors is further substantiated by ongoing practices in at least two areas that are in opposition to the predominant situation with regard to colonial cultural objects.[153] Firstly, the discourse surrounding integrative approaches to the illicit cross-border trade of cultural objects is deepening, also within the context of both the 1970 UNESCO Convention and the 1995 UNIDROIT Convention.[154] With regard to colonial cultural objects, the ongoing efforts of the Dutch Colonial Collections Committee are making strides in this direction. The decision to return over 28,000 specimens, most of which are fossils, to Indonesia in late September 2025, following a recommendation by the Committee,[155] reflects a holistic approach that takes cognizance of the roles of both public and private actors in their removal.[156]

To ensure balanced outcomes in restitution claims, the walls surrounding the garden of international cultural heritage law, and the narrow walls around our mindset, will have to be dismantled. Only then will conditions be favourable for the most beautiful flowers to bloom. Avenues for accessing justice. Are we prepared to do what is required?

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[153] On this point, see in general Alicja Jagielska–Burduk, *Cultural Heritage as a Legal Hybrid: Between Public and Private Law* (2022).
[154] In general, see Ana Filipa Vrdoljak, Andrzej Jakubowski and Alessandro Chechi (eds), *The 1970 UNESCO and 1995 UNIDROIT Conventions on Stolen or Illegally Transferred Cultural Property: A Commentary* (2024).
[155] Dutch Colonial Collections Committee, Recommendation From the Colonial Collections Committee on the Dubois Collection, No. ID-2025-1, 26 September 2025, p. 24.
[156] Ibid, pp. 21–23.