

Editorial

The Law in Quest for Purity: Tracing Things or Men?

It has become commonplace to say that we are living in an age of paradoxes. Nevertheless, it appears that some paradoxes have yet to be explained and clarified. What I am attempting here is to discuss a paradox that can be found in a series of legal developments, by comparing developments relating to rules governing the nature of goods, on the one hand, and rules concerning (wo)men, on the other hand. Let us take a look at the role played by origins and past in relation to things and human beings.

In many respects, things – i.e., objects – are currently judged less by what they are than, increasingly, by their origin and past. At present, the economic value of things often depends less on their intrinsic qualities than on their origin or their track record or history. The value of a work of art seems to depend much more on the reputation enjoyed by the author rather than on its intrinsic quality; not only works of art, but many other goods, command much higher prices if they were owned by a celebrity, if they were used at a certain significant point in time, etc. However, why should a genuine Vermeer – for example – command a higher price than a perfect imitation by Van Meegeren? Why pay more for a first edition of a book in bad shape than for a more recent one in perfect condition? Why are origin and track record more important than quality? Contemporary law has added to this trend in many respects. By granting high levels of protection to trademarks, the law allows their holders to capitalize on origin rather than on quality. Perfectly good products bearing the wrong trademark or indication of geographical origin are dismissed as counterfeits and have to be destroyed on the altar of the sacred law of origin, even where the objects in question are farm produce distributed in countries suffering food shortages. Many products, in sectors as wide-ranging as meat, clothing, or minerals, are increasingly subject to supply chain control. Quality control may be a valid motive for some of these rules, but certainly not for all, and modern technology allows us to test the quality of goods without reference to information about their past. In an age where children may no longer be stigmatized because they are born out of sin, the sins of sellers are increasingly infecting the goods they sell, and a diamond that has never seen any blood nor shed it becomes a blood diamond. ‘*Pecunia non olet*’ was the wisdom of the emperor Vespasian, when imposing a tax on the distribution of urine from public urinals in the *Cloaca Maxima*. Today, money is no longer money as such, it is black or white, it is earmarked as is cattle, and we are locked in global combat with those who launder its past, and punish those who receive money for the crimes committed by those with whom they deal. The goods

infected by the sins of their creators, such as child labour, infect the firms buying them and tend to infect even those who wear these ‘unclean’ clothes.

When it comes to human beings, on the other hand, contemporary law is, in many respects, in the process of rendering their origin and past irrelevant, and the latter’s use has become suspect or even criminal. In the Bible, the God of Exodus is ‘*a jealous God, visiting the iniquity of the fathers upon the children unto the third and fourth generation of them that hate him*’. To our current generation, it is taken for granted that we no longer punish children for the sins of their ancestors. However, the law also tends to shield people from their individual past. The Court of Justice has invented the right to oblivion in search engines, and privacy law places enormous restrictions on the data we may collect about our fellow human beings. French law prohibits any mention of a criminal conviction once the individual concerned has been granted amnesty. The morality of personal track records has changed, and in the West, young women with a past still have a future. When recruiting employees, we are no longer allowed to ask certain questions or take into account many aspects of an applicant’s past, in view of the laws prohibiting discrimination based on national, ethnic, or social origin, status, or birth. We are required to judge people on what they are now (to the extent that we are still allowed to judge them at all). Laws based on purity of blood are now generally seen as the most abject basis for rule-making imaginable. Contrary to the notions celebrated in the past, it is a lack of purity that is now celebrated in its various forms. Nevertheless, all this remains a remarkable phenomenon in an age where a buyer of goods has the right, and sometimes even the duty, to know everything about the origins and track record of his purchase.

Chassez le naturel, il revient au galop. The more we try to wipe out people’s past, the more the past of things comes to haunt us. Our thirst for purity has not diminished. It has merely shifted.

We wish you nevertheless a pleasant reading of this issue of our journal, dealing with things as object of transactions (sales law, payment of money, polluted land, pledge in movables) and human beings as practising legal culture (comparative law methodology, culture, and legal transplants).

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