Four Cultural Heritage Case Studies

Chair/Discussant: Paul Berman

Panelists:

**Paolo Farah - Conflict between Intellectual Property Rights and Human Rights: A Case Study on Intangible Cultural Heritage**

The increasing sensibility regarding cultural heritage provides momentum to better define a legal framework for the protection of these peculiar intangible goods. It is indeed fundamental to ascertain whether the current intellectual property rights (IPRs) regime represents an adequate model of protection vis-à-vis intangible cultural heritage. As a matter of fact, a comparison of the rationales for these two domains of legal protection is scarcely attainable as specific relevance must be given to topical concerns of the countries implicated. These concerns are pivotal for elaborating the needed legal protection.

Our analysis begins framing the crucial issues detected in literature regarding intangible cultural heritage and then proceeds to investigate the ways in which the actual IPRs regime grants protection to intangible goods. Our evaluation supports the idea that without a many-faceted remodeling, current intellectual property laws represent an unsatisfactory footing to protect intangible cultural heritage, as one can infer from the inefficacy of IPRs under the patent and copyright regimes to ensure protection of cultural heritage, besides falling short of fostering an apt comprehensive social policy.

**Xiaoqian Hu - The Law and Politics of State Preservation of Intangible Cultural Heritage: From UNESCO to China**

This paper exposes the politics of UNESCO and Chinese efforts to preserve cultural practice and thereby critiques the appropriative and regulatory nature of the legal enterprise of cultural preservation. Despite UNESCO's aspiration to provide a decentralized, people-centered paradigm, its nature as an inter-governmental organization makes it perpetuate the preexisting nation-centered model of cultural preservation. China implements and magnifies the UNESCO model by creating an all-active state and silencing local communities. The law empowers the Chinese state to turn cultural practice into a resource for nation building and to recognize, reject, and regulate cultural practice with the state's own values. Yet, the law also provides a legitimating rhetoric for members of society to challenge state control and advance their interests, particularly when conflicts and backfires within the government create opportunities for strategizing. Through the complex interplay between official indoctrination and societal strategization, culture evolves, transformed and modernized.

**Alexander Nagel - The Last of the Qataban: Preserving Ancient cemeteries and antiquities laws in the Yemen**

Yemen’s wealth of ancient relics in the form of temple architecture, monumental sculptures and manuscripts and ownership of heritage has been protected and regulated by strong by-laws for centuries. As the southern regions have been in parts administered by members of the British
Protectorate from Aden until the 1960s, while other parts were administered by a set of tribal laws, any documentation of legislative preservation commitments requires a more nuanced approach. This paper will introduce aspects of the illicit antiquities trade and policy making in the province of the Wadi Beihan, a region that has been hitherto unexplored by scholars of jurisprudence and investigative criminologists. I will trace the history of the licit and illicit trade of materials from the ancient Qataban capitals and will conclude by providing a number of recommendations about how to prevent further theft of heritage materials.

**Keon Pettiway - Narrating the Constitutive Rhetoric of Law and Cultural Property**

Ghana has sought to protect folklore and cultural expressions in the global marketplace by adopting Copyright Laws 1985 (P.N.D.C. Law 110) and 2005 (Act 690), but these policies are largely ignored in the international public domain. As noted in the November 1996 edition of Ghana’s Public Agenda newspaper, this issue is most salient when Asian textiles factories produce imitations of kente without paying royalties for cloth designs. This essay argues that narrating the constitutive rhetoric of law that governs the global circulation of adinkra provides a way to imagine alternative international policies to protect cultural properties. Using a theory of constitutive law and critical cultural legal studies, this essay investigates the function of law in the case of Ghanaian textiles and narrates legal infrastructures as spaces of struggle within everyday practices and institutionalized jurisdiction within the United States, China, and Ghana.