Seminar 4
The Politics of Regulating Cultural Property in a Mobile World (Fiona Macmillan)
Thursday 8 June, 9.30-10.45

There are two dominant legal tropes for thinking about the regulation of cultural property in international law, intellectual property law and cultural heritage law. Both are subject to extensive harmonization in international law where, of course, they reflect Western sensibilities about both culture and property. Under these circumstances, it is no surprise that these tropes reflect the Western cultural tendency to think about the world in binary distinctions. The law and politics of cultural property regulation is awash with these distinctions, which often have the appearance of empirical validity and yet are conceptually problematic in ways that bring their meaning and validity into question. One of these is the distinction between moveable and immovable cultural property. This distinction, which – like its cultural property bedfellow, the tangible/intangible distinction – reflects the Western juridical order governing interests in property. This is inherently problematic for a variety of reasons. One of these is that it mixes the protection of private property rights with non-private rights in cultural property. At the same time, it relies on concepts of mobility that have difficulty relating to the hyper-mobility of cultural property in the digital age.

This seminar will consider:

- The relationship between intellectual property law and cultural heritage law in cultural property regulation

- The political implications, in the context of cultural property regulation, of the binary distinction in Western property law between moveable and immoveable things.

- The relationship between mobility and authenticity.

- The "return" of cultural property in the digital realm.

- The impact of digital technologies on the distinction between what is moveable and what is not, including a consideration of the extent to which the transformation of one form of cultural property into another through the use of generative artificial intelligence constitutes a type of moveability that challenges current regimes for the regulation of cultural property and the binary distinctions on which they are based.

Readings

- Kathy Bowrey & Jane Anderson, 'The Politics of Global Information Sharing', *Social & Legal Studies* 18 (2009), 479-504
- Fiona Macmillan, *Intellectual and Cultural Property: Between Market and Community* (Abingdon: Routledge, 2021), Chapter 5
- Fiona Macmillan, 'Regulating Communities: Strategies for an Open Museum Sector', in Marta Arisi & Giulia Dore (eds), *Open Museums!* (Milan: Ledizioni, 2023)
- Mathilde Pavis and Andrea Wallace, *Response to the Sarr-Savoy Report: Statement on Intellectual Property Rights and Open Access Relevant to the Digitization of African Cultural Heritage and Associated Materials* (25 March 2019)
- Joseph Slaughter, "'It's Good to be Primitive'," in Paul K. Saint-Amour (ed), *Modernism & Copyright* (Oxford: OUP, 2011), pp. 275-301