

Clinic on the Restitution of Cultural Property

(2 CFU)

First Semester 2025/2026

Professor Fiona Macmillan: fionaelizabeth.macmillan@uniroma3.it

Objectives:

1. To understand the legal and institutional issues relevant to the international restitution of cultural property.
2. To locate the legal and institutional issues relevant to the international restitution of cultural property within the political economy of the post-colonial global order.
3. To draft an international code on the restitution of cultural property.

Assessment:

The clinic will be assessed on a pass/fail basis. In order to pass the course students must attend classes and participate in the drafting of an international code on the restitution of cultural property.

Reading:

There is no textbook for this clinic. However, students may find the following works useful. More specific reading for each of the classes is contained in the calendar below.

R Atwood, *Stealing History: Tomb Raiders, Smugglers and the Looting of the Ancient World* (St Martin's Press, 2004)

H K Bhabha, *The Location of Culture* (Routledge, 1994)

T Bennett, *Out of Which Past? Critical Reflections on Australian Museum and Heritage Policy* (ICPS, 1988)

T Bennett, *The Birth of the Museum: History, Theory, Politics* (Routledge, 1995)

M F Brown, *Who Owns Native Culture?* (Harvard, 2004)

R J Coombe, *The Cultural Life of Intellectual Properties: Authorship, Appropriation and the Law* (Duke University Press, 1998)

J Cuno, *Who Owns Antiquity? Museums and the Battle over Our Ancient Heritage* (Princeton University Press, 2008)

- J Greenfield, *The Return of Cultural Treasures* (Cambridge, 3rd ed, 2007)
- R Harrison, *Heritage: Critical Approaches* (Routledge, 2013)
- F Macmillan, *Western Dualism and the Regulation of Cultural Production* (Brill, 2020)
- F Macmillan, *Intellectual and Cultural Property: Between Market and Community* (Routledge, 2021)
- A Maxwell, *Colonial Photography and Exhibitions: Representations of the 'Native' and the Making of European Identities* (Leicester UP, 2000)
- M M Miles, *Art as Plunder: The Ancient Origins of the Debate about Cultural Property* (Cambridge, 2010)
- P J O'Keefe, *Commentary on the UNESCO 1970 Convention on Illicit Traffic* (Institute of Law and Art, 2nd ed, 2007)
- P J O'Keefe & L V Prott, *Cultural Heritage Conventions and Other Instruments: A Compendium with Commentaries* (Institute of Art and Law, 2011)
- T Richards, *The Imperial Archive: Knowledge and Fantasy of Empire* (Verso, 1993)
- M G Simpson, *Museums and Repatriation: An Account of Contested Items in Museum Collections in the UK, with comparative Material from Other Countries* (Museums Association, 1997)
- M G Simpson, *Making Representations: Museums in the Post-Colonial Era* (Routledge, 2001)
- L Smith, *The Uses of Heritage* (Routledge, 2006)
- I A Stamatoudi, *Cultural Property Law and Restitution: A Commentary to International Conventions and European Union Law* (Edward Elgar, 2011)
- A Vrdoljak, *International Law, Museums and the Return of Cultural Objects* (Cambridge, 2006)
- S Waxman *Loot: The Battle Over the Stolen Treasures of the Ancient World* (Henry Holt, 2008)

Class Calendar

Friday 17 October	Introduction to the themes of the course: • Cultural property and cultural heritage ○ identity and community ○ community and cultural production ○ cultural production and resistance • Colonial and post-colonial • The West and the rest • Museums • International law and its institutions ○ national, international, global ○ community, nation, state ○ Indigenous Peoples ○ legal protection of cultural property and cultural heritage ○ immovability and movability ○ tangibility and intangibility ○ digitization ○ commodification ○ intellectual property
Friday 17 October	Cultural property in the colonial and post-colonial periods <i>Reading:</i> • Macmillan 2021, ch 3 • Macmillan, “Regulating Communities: Strategies for an Open Museum Sector” in G Dore & M Arisi (eds), <i>Open Up Museums!</i> (LED Edizioni, forthcoming) • Vrdoljak 2008, ch 7 • UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expressions 2005
Friday 31 October	International Law I: • Structure, instruments and institutions • Cultural property and cultural heritage <i>Reading:</i> • Macmillan 2021, ch 4 • Vrdoljak 2008, chs 4-6

	• UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 • UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects 1995 • UNESCO Convention on the Protection of the World Cultural and Natural Heritage 1972
Friday 31 October	International Law II: • Cultural property and cultural heritage • Intellectual property <i>Reading:</i> • Macmillan 2021, ch 5 • WTO Agreement on Trade-related Aspects of Intellectual Property 1995 • UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage 2003 • UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expressions 2005
Friday 28 November	(Mis)appropriation I: Tangibles • Relocation and decontextualization <i>Reading:</i> • Vrdoljak 2008, chs 1 & 2
Friday 28 November	(Mis)appropriation II: Intangibles • Decontextualization, digitization and commodification <i>Reading:</i> • Macmillan, "Intellectual Property and Cultural Heritage: Towards Interdisciplinarity" in I Calboli & M L Montagnani, <i>Handbook of Intellectual Property Research: Lenses, Methods, and Perspectives</i> ((Oxford, 2021)
Friday 5 December	Restitution and resistance <i>Reading:</i> • Macmillan 2021, ch 7

Friday 5 December	Workshop 1: Drafting an international code
Friday 12 December	Workshop 2 & 3: Drafting an international code