

**LAWS 4601A – Transnational
Law & Human Rights
Wednesdays 14h35-17h35**

Instructor: François Le Moine
Office: B442 LA
Office Hours: By appointment only
Email: francois.lemoine@carleton.ca

Course description and material

This course is an introduction to the law governing the Arts and Cultural Property through the perspective of Transnational Law. We will study the evolution over the past two centuries of the domestic and international legal regimes that protect cultural heritage in times of peace and in times of war, as well as the legal problems associated with restitutions of stolen works. This will in turn allow students to gain an understanding of the often contradictory dynamics between domestic and international law and the challenges that will need to be addressed in the upcoming years in order to integrate domestic and international law into a coherent framework.

We will make use of a wide variety of sources throughout the semester: jurisprudence, doctrine, newspaper articles as well as filmed documentaries. All of the required material is either available online or can be found on Ares. Students must read the assigned material found in the “Reading” section prior to every class.

The evaluation is designed to both draw and build on a diverse set of skills: oral communication, research and overall understanding and synthesis of the class.

Evaluation (all components must be completed in order to get a passing grade)

➤ Class participation (10%)

Students are expected to come prepared to each class and actively participate in the class discussion. Regular attendance is necessary, but not sufficient to earn participation marks.

➤ Class presentation (15%)

Each class begins with a group presentation (three students per group) of about 20 minutes. Most presentations combine the study of an important historical episode and the analysis of a significant statute or case law. Each student in the group will receive the same grade for the presentation. The presentations are not in chronological order, but have been organized to correspond with the topic discussed during the seminar:

Class 2: Europeans digging in the West Mediterranean: the Elgin Marbles (1801-1802), the Venus de Milo (1820-1821), Priam's Treasure (1873) and the Bust of Nefertiti (1912).

Class 3: The burning of the Summer palace during the Second Opium War (1860).

Class 4: Back in the USSR: Confiscations after the Revolution and the War trophies of WWII.

Class 5: Destructions during the war in Yugoslavia (1991-1994).

Class 6: Burning the Four Olds: the legacy of China's Communist Party.

Class 7: 1- Domestic controversies: Native Art, Polish Art.

2- The Max Stern Art Restitution Project.

Class 8: 1- Restitution of Nazi Looting, the *causes célèbres* part 1: Schiele's Portrait of Wally, Vermeer's *Art of Painting*.

2- Restitution of Nazi Looting, the *causes célèbres* part 2: Klimt's *Portrait of Adele Bloch-Bauer* and Matisse's *Woman in Blue in Front of Fireplace*.

Class 9: The last iconoclasts? Islam's fundamentalists and the Arab Spring.

Class 10: Turkey's occupations: The destruction of Armenian and Cyprian cultural heritage.

Class 11: "Stuff Happens": Destructions and looting in Iraq before and after the 2003 American invasion.

➤ Exam (30%):

The quiz will consist of short answer questions and essays. It will test all the material that was covered during the semester, including student presentations. It is not meant to be difficult, but rather to ensure that important concepts and cases discussed in class are well understood.

➤ **Research essay / Wikipedia article (45%):**

Students have a choice for the research component of this class. You can either chose to write a research paper or a Wikipedia page relating to a topic relevant to the course. Feel free to discuss with me any topic ideas you might have.

A proposal for the essay or the Wikipedia article must be sent to my email by **Monday, 14 October, at 23h00**. This proposal should be about 300 words and must include the student's thesis, an outline and bibliographical sources. Failure to send the proposal on time will result in the same penalty as failure to submit the final essay on November 25th (see below).

Essays are to be submitted, via email to francois.lemoine@carleton.ca, in Word or LibreOffice format, no later than **Monday, 25 November, at 23h00**. Final versions of the Wikipedia article must be posted by the same date and you must send me an email with the link to the article or articles and the user name you used to edit the article.

The essay should be roughly 3,500 words long. Citations should be in the format of Carleton's hand-out based on McGill's *Uniform Legal Citation Guide*.

The Wikipedia page should be about 20,000 bytes long and include appropriate links to other pages and media. You are free to either create a page improve an existing page. Use Wikipedia's citing method. If you do not find that there is sufficient material to write one article, you may instead write two shorter articles. You may also choose to work in pairs, as long as the input is about 50,000 bytes. The grade will be the same for both students.

Assignments submitted late will be penalized 5% of the value of the assignment per day late, to a maximum of 10 days, after which the assignment will receive a grade of zero. Weekends are included in the calculation of late penalties. No extension will be granted unless it is based on medical grounds and is documented by a physician. As for the Wikipedia article, nothing written after the deadline will be considered in the final grade.

Course Topics and Class Schedule

Class 1 (11 September): Defining the problem

- ❖ Introduction: war, art looting and cultural destructions.

Video:

- ❖ *The Rape of Europa*, Richard Berge, Bonni Cohen and Nicole Newnham (2007), based on the book by Lynn Nicholas.

Class 2 (18 September): Why should we protect art and who should protect it?

Class presentation:

- ❖ **Historical context:**

Elginize This, part 1: Europeans digging in the West Mediterranean: the Elgin Marbles (1801-1802), the Venus de Milo (1820-1821), Priam's Treasure (1873) and the Bust of Nefertiti (1912).

- ❖ **Case study:**

Where does art belong? Quatremère de Quincy, *Letters to Miranda and Canova on the abduction of antiquities from Rome and Athens* (Los Angeles : Getty Research Institute, 2012).

Readings:

- ❖ JL Sax, "Heritage Preservation as a Public Duty: The Abbe Grégoire and the Origin of an Idea" (1990) 88 Mich L Rev 1142.
- ❖ Mark Busse, "Epilogue: Anxieties about Culture and Tradition – Property as Reification" (2009) 15 Int'l J Cult Prop 357.
- ❖ David Lowenthal, *The Past is a Foreign Country* (London: Cambridge, 1985), ch 5, p 252- 258.

Class 3 (25 September): What is cultural property and is there a right to culture?

Class presentation:

- ❖ **Historical context:**

Elginize This, part 2: The burning of the Summer Palace during the Second Opium War (1860).

- ❖ **Case study:**

Restitutions in Asia: the return of Maori Heads in New Zealand, see Robert K. Paterson, "Heading Home: French Law Enables Return of Maori Heads to New Zealand" 17 Int'l J Cult Prop 643.

Readings:

- ❖ Janet Blake, “On Defining the Cultural Heritage” (2000) 49 ICLQ 61.
- ❖ Janusz Symonides, “Cultural Rights: A Neglected Category of Human Rights” (1998) 50 Int’l Social Science J 559.
- ❖ Roger O’Keefe, “The Right to Take Part in Cultural Life’ Under Article 15 of the ICESCR” (1998) 47:4 ICLQ 904.

Class 4 (2 October): Cultural heritage in times of war

Class presentation:

❖ Historical context:

Back in the USSR: Confiscations after the Revolution and the War trophies of WWII (see Patricia Kennedy Grimsted, “Legalizing ‘Compensation’ and the Spoils of War: The Russian Law on Displaced Cultural Valuables and the Manipulation of Historical Memory” (2010) 17:2 Int’l J Cult Prop 217).

❖ Case study:

Agudas Chasidei Chabad v Russian Federation (see the case comment: Michael J Bazylar and Seth M Gerber, “*Chabad v. Russian Federation: A Case Study in the Use of American Courts to Recover Looted Cultural Property*” (2010) 17:2 Int’l J Cult Prop 361).

❖ Background:

- Paul Ruban, “Happy 500th birthday, Raphael cherubs”, *Maclean’s* (30 July 2012) <<http://www2.macleans.ca/2012/07/30/remember-those-two-ringed-raphael-cherubs-they-just-turned-500/>>.
- “Merkel and Putin view exhibition of disputed art”, *BBC* (21 June 2013) <<http://www.bbc.co.uk/news/world-europe-23001274>>.

Readings:

- ❖ Wayne Sandholtz, “Plunder, Restitution, and International Law” 17:2 Int’l J Cult Prop 147.
- ❖ Patty Gerstenblith, “Archaeology in the context of war: Legal frameworks for protecting cultural heritage during armed conflict” (2009) 5:1 Archaeologies 18.
- ❖ Catherine Phuon, “The Protection of Iraqi Cultural Property” (2004) 53 ICLQ 985.

Class 5 (9 October): International criminal law, cultural heritage and domestic consequences

Class presentation:

❖ Historical context:

Destructions during the war in Yugoslavia (1991-1994).

❖ Case study:

Can cultural destruction, in and of itself, amount to genocide? *Case concerning the application of the convention on the prevention and punishment of the crime of genocide, Bosnia and Herzegovina v Serbia and Montenegro*, [1995] ICJ Rep 43.

Readings:

- ❖ “Looting and the International Law of War” in John Henry Merryman, Albert Elsen and Stephen Urice, *Law, Ethics and the Visual Arts* (5th ed) (Alphen aan den Rijn: Kluwer, 2007), p 14-23.
- ❖ Roger O'Keefe, “Protection of Cultural Property under International Criminal Law” (2010) 11:2 *Melb J Int'l L* 339.
- ❖ Crimes Against Humanity and War Crimes Act, SC 2000, c 24 <<http://laws-lois.justice.gc.ca/PDF/C-45.9.pdf>>.

Monday, October 14th at 23h00:

Reminder: You must submit your topic today.

Class 6 (16 October): Cultural property in times of peace: The international law

Class presentation:

- ❖ **Historical context:**

Burning the Four Olds: the legacy of China's Communist Party. Destruction in Tibet since the 1950 annexation and the three waves of cultural destruction on the mainland; the Great Leap Forward, the Cultural Revolution and the economic boom.
- ❖ **Case study:**

An introduction to Conflict of Laws: *Winkworth v Christie Manson and Woods Ltd* (UKCA) [1980] 1 ER (Ch) 496.
- ❖ **Background on Tibet:**

Subhuti Dharmananda, “From Tibet to India: History of the Attempted Destruction of Tibetan Culture in Tibet and the Efforts at Preservation of Tibetan Culture in Exile”
<<http://www.itmonline.org/arts/drepadd.htm>>.
- ❖ **Background on China:**
 - “Burn Loot and Pillage”, *The Specialist Guide to Chinese Antiques* <<http://www.antique-chinese-furniture.com/blog/2013/02/10/burn-loot-and-pillage-destruction-of-antiques-during-chinas-cultural-revolution/>>.
 - “China decries "senseless" destruction of heritage”, *Reuters* (11 June 2007)
<<http://uk.reuters.com/article/2007/06/11/uk-china-buildings-idUKPEK13929620070611>>.

Readings:

- ❖ John Henry Merryman, “Two Ways of Thinking about Cultural Property” (1986) 80 AJIL 831.
- ❖ David Rudenstine, “The Rightness and Utility of Voluntary Repatriation” (2001) 19 Cardozo Arts & Ent LJ 69.
- ❖ “Memorandum of understanding between the Government of the United States of America and the Government of the Hellenistic Republic”, 17 July 2011 (2012) 19:4 Int’l J Cult Prop 487.
- ❖ Joseph P Fishman, “Locating the International Interest in Intranational Cultural Property Disputes” (2010) 35 Yale J Int’l L 347 [sections I to III].

Class 7 (23 October): Cultural property in times of peace: the domestic law

Class presentation 1:

❖ **Historical context:**

Domestic controversies: Native Art, Polish Art.

- Rosemary Coombe, “The Properties of Culture and the Politics of Possessing Identity: Native Claims in the Cultural Appropriation Controversy” VI (2) Can JL & Jur 249.
- Sharon A Williams, “Polish Art Treasures in Canada, 1940- 1960” (1977) Can YB Int’l Law 146.
- See Catherine Bell, “Restructuring the Relationship: Domestic Repatriation and Canadian Law Reform”, in Catherine Bell and Robert K Paterson, *Protection of First Nations Cultural Heritage* (Vancouver: UBC Press, 2009) (on reserve, the chapter can be found here <<http://www.ubcpress.ca/books/pdf/chapters/2009/ProtectionofFirstNationsCulturalHeritage.pdf>>).

❖ **Case study:**

Sale and Title at Common Law and Civil Law:

- *Winkworth v Christie Manson and Woods Ltd* (UKCA) [1980] 1 ER (Ch) 496.
- *City of Gotha and Federal Republic of Germany v Sotheby's and Cobert Finance SA* [1998] 1 WLR 114.

Class presentation 2:

❖ **Historical context:**

The Max Stern Art Restitution Project.

❖ **Case study:**

Laches and limitations:

- *Vineberg v Bissonnette*, 529 F Supp 2d 300 (DRI 2007).
- *Vineberg v Bissonnette*, 548 F 3d 50, 56 (1st Cir. 2008).
- *City of Gotha and Federal Republic of Germany v Sotheby's and Cobert Finance SA* [1998] 1 WLR 114 (focus on statutes of limitation).
- Steven A Bibas, “The Case Against Statutes of Limitations for Stolen Art” (2004) 103 Yale LJ 2437).

Readings:

- ❖ *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970*, 14 November 1970 (entered into force 9 May 1972) <http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html>.
- ❖ *Cultural Property Export and Import Act*, RSC 1985, c C-51 <<http://laws-lois.justice.gc.ca/PDF/C-51.pdf>>.
- ❖ UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, 24 June 1995 (entered into force 1 July 1998) <<http://www.unidroit.org/english/conventions/1995culturalproperty/1995culturalproperty-e.pdf>>.
- ❖ Patty Gerstenblith “United States and Canada”, Expert Report to the Second Meeting of States Parties to the 1970 Convention (20-21 June 2012) <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Gerstenblith_en.pdf>.
- ❖ Joseph P Fishman, “Locating the International Interest in Intranational Cultural Property Disputes” (2010) 35 Yale J Int’l L 347 [[sections IV to VI](#)].

30 October: Fall break

Class 8 (6 November): Immunities and restitutions

Class presentation 1:

- ❖ **Historical context:**
Restitution of Nazi looting, the *causes célèbres* part 1: Schiele’s *Portrait of Wally*, Vermeer’s *Art of Painting*.
- ❖ **Case study:**
US v Wally US District CT SD NY 2010.
- ❖ **Background on Vermeer:**
Catherine Hickley, “Hitler’s Vermeer, Pride of Vienna Museum, Faces Nazi-Era Claim”, *Bloomberg* (26 January 2010) <<http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aLWVGZ.ghJAU>>.

Class presentation 2:

- ❖ **Historical context:**
Restitution of Nazi looting, the *causes célèbres* part 2: Klimt’s *Portrait of Adele Bloch-Bauer* and Matisse’s *Woman in Blue in Front of Fireplace*.
- ❖ **Case study:**
Republic of Austria v Altmann (2004) 541 US 677 <<http://www.law.cornell.edu/supct/html/03-13.ZS.html>>.
- ❖ **Background on Matisse:**

Tom Mashberg, "Family Seeks Return of a Matisse Seized by the Nazis", *The New York Times* (5 April 2013) <http://www.nytimes.com/2013/04/06/arts/design/rosenberg-family-asks-norwegian-museum-to-return-a-matisse.html?_r=0>.

Readings:

- ❖ Daniel Getz, "The History of Canadian Immunity from Seizure Legislation" (2011) 18 Int'l J Cult Prop 201.
- ❖ Glenn D. Lowry, "Cultural Property: A Museum Director's Perspective (1998) 7:2 Int'l J Cult Prop 438.
- ❖ Marie Cornu and Marc-André Renold, "New Developments in the Restitution of Cultural Property: Alternative Means of Dispute Resolution" (2010) 17:1 Int'l J Cult Prop 1.

Class 9 (13 November): The Market for cultural property and the struggle for regulation

Class presentation:

❖ Historical context:

The last iconoclasts? Islam's fundamentalists and the Arab Spring.

❖ Case study:

The Network for Black Market Art and case studies, in Peter B Campbell, "The Illicit Antiquities as a Transnational Criminal Network: Characterizing and Anticipating Trafficking of Cultural Heritage" (2013) 20 Int'l J Cult Prop 113.

❖ Background on Saudi Arabia (20th Century -):

Tariq Ramadan and Irfan al-Alawi "How can Wahhabi vandalism be stopped?", Press TV Global News <<http://www.youtube.com/watch?v=knyPPrj0rAc>>.

❖ Background on Iran (1979 -):

"Baha'is decry cultural cleansing in Iran", Baha'i World News Service (12 September 2004) <<http://news.bahai.org/story/323>>.

❖ Background on Afghanistan (1997 - 2001):

Stephanie Hegarty "Bamiyan Buddhas: Should they be rebuilt?" (12 August 2012), BBC <<http://www.bbc.co.uk/news/magazine-18991066>>.

❖ Background on Libya (2011 -):

"Sufi religious sites in Libya" (10 September 2012) <<http://www.un.org/apps/news/story.asp?NewsID=42838#.UhzNIIxfSt4>>.

❖ Background on Mali (2011 -):

"Timbuktu's mausoleum attacks, 'a message' to Mali leaders" France 24 (1 July 2012) <<http://www.france24.com/en/20120701-timbuktu-mausoleum-attacks-bamako-mali-islamist-al-qaeda-ansar-dine-tuareg>>.

❖ Background on Egypt (2011 -):

- “Amid army crackdown, Egypt’s richest library set on fire” *Egypt Independent* (17 December 2011) <<http://www.egyptindependent.com/news/amid-army-crackdown-egypt%E2%80%99s-richest-library-set-fire>>.
- “Biggest museum theft in Egyptian history: Over 1,000 artifacts stolen”, *Russia Today* <<http://rt.com/news/museum-theft-egypt-robbery-725/>>.
- Egyptian Christians attacked, dozens of churches torched, *Russia Today* (21 August 2013) <<http://rt.com/news/egypt-christian-churches-muslim-662/>>.

❖ **Background on Syria** (2011 -):

ICOMOS (19 July 2013) “ICOMOS Statement on Crac des Chevaliers and the continuing destruction of the cultural heritage of Syria”

<http://www.icomos.org/images/DOCUMENTS/Secretariat/2013/Homepage/ICOMOS_Statement_Syria_EN_FR_20130719final.pdf>.

Readings:

- ❖ Alexander Bauer, “New Ways of Thinking About Cultural Property: A Critical Appraisal of the Antiquities Trade Debates” (2007) 31 *Fordham Int’l LJ* 690.
- ❖ Patty Gerstenblith, “Controlling the International Market in Antiquities: Reducing the Harm, Preserving the Past” (2007) 8 *Chicago J Int’l L* 169.
- ❖ Anne Laure Bandle, “Legal Questions of Art Auctions” (2011) 18 *Int’l J Cult Prop* 449.

Class 10 (20 November): Museum policies

Class presentation:

❖ **Historical context:**

Turkey’s occupations: The destruction of Armenian and Cyprian cultural heritage.

❖ **Case study:**

Autocephalous Greek-Orthodox Church of Cyprus v Goldberg & Feldman Fine Arts, Inc. 917 F 2d 278

<<http://www.degenevieve.com/files/Cyprus%20v%20Goldberg.pdf>> (focus on the treatment of TFSC edicts).

❖ **Background on Armenia:**

“Cultural genocide” Armenian Genocide Museum-Institute <http://www.genocide-museum.am/eng/cultural_genocide.php>.

❖ **Background on Cyprus:**

- “The destruction of the Cultural Heritage of Cyprus by Turkey” <<http://www.youtube.com/watch?v=xp7FHYPUKVg#t=152>>
- Chris Morris, “Shame of Cyprus’s looted churches”, BBC (18 January 2002) <<http://news.bbc.co.uk/2/hi/europe/1768274.stm>>.

Readings:

- ❖ Clemency Chase Coggins “A Proposal for Museum Acquisition Policies in the Future” (1998) 7 *Int’l J*

Cult Prop 434.

- ❖ Patrick J O’Keefe, “Codes of Ethics: Form and Function in Cultural Heritage Management” (1998) 7 Int’l J Cult Prop 32.
- ❖ James Cuno, “Museum and the acquisition of Antiquities” 19 Cardozo Art & Ent LJ 83.

Monday, 25 November 2013:

Reminder: Essays must be sent and Wikipedia articles must be finalized today.

Class 11 (27 November): The not so splendid isolation: the inadequate relationship between domestic and international law

Class presentation:

- ❖ **Historical context:**
“Stuff Happens”: Destructions and looting in Iraq before and after the 2003 American invasion.
- ❖ **Case Study:**
Smuggled antiquities at home: *US v Schultz*, 2003 USCA.
- ❖ **Background on Iraq:**
 - Ihsan Fethi’s TED Talk <<http://www.youtube.com/watch?v=x34lj6xChOk>>.
 - Inside Iraq, “Reopening Iraq's museum”, *Al Jazeera* <<http://www.youtube.com/watch?v=VOZQDDDDgCQk>> and <<http://www.youtube.com/watch?v=aK60otiwAc8>>.

Readings:

- ❖ Hugh M Kindred et al., *International Law*, 7th ed (Toronto: Emond Montgomery, 2006), p 183-186, 220-221 and 234-244.
- ❖ Armand de Mestral and Evan Fox-Decent, “Rethinking the Relationship between International Law and Domestic Law” (2008) 53 McGill LJ 573.

Class 12 (4 December): Catch-up and Review session

- ❖ No new material. We will cover anything we might not have had time to discuss during the semester and I will answer questions concerning the exam.

Academic Accommodations

You may need special arrangements to meet your academic obligations during the term. For an

accommodation request the processes are as follows:

Pregnancy obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

Religious obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

Academic Accommodations for Students with Disabilities: The **Paul Menton Centre** for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your **Letter of Accommodation** at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (*if applicable*). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (*if applicable*) at <http://www2.carleton.ca/pmc/new-and-current-students/dates-and-deadlines/>

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://www2.carleton.ca/equity/>

Plagiarism

Plagiarism: The University Senate defines plagiarism as “presenting, whether intentional or not, the ideas, expression of ideas or work of others as one’s own.” This can include:

- ❖ Reproducing or paraphrasing portions of someone else’s published or unpublished material, regardless of the source, and presenting these as one’s own without proper citation or reference to the original source;
- ❖ Submitting a take-home examination, essay, laboratory report or other assignment written, in whole or in part, by someone else;
- ❖ Using ideas or direct, verbatim quotations, or paraphrased material, concepts, or ideas without appropriate acknowledgment in any academic assignment;
- ❖ Using another’s data or research findings;
- ❖ Failing to acknowledge sources through the use of proper citations when using another’s works and/or failing to use quotation marks;
- ❖ Handing in "substantially the same piece of work for academic credit more than once without prior written permission of the course instructor in which the submission occurs.

Plagiarism is a serious offence, which cannot be resolved directly with the course's instructor. The Associate Deans of the Faculty conduct a rigorous investigation, including an interview with the student, when an instructor suspects a piece of work has been plagiarized.

Penalties are not trivial. They include a mark of zero for the plagiarized work or a final grade of "F" for the course.

Oral Examination

At the discretion of the instructor, students may be required to pass a brief oral examination on research papers, essays or Wikipedia page.