



Interview with Law Professor Diane Penneys Edelman

By 2017 LCCHP fellow Khamal Patterson

KP: Professor Edelman, you have been teaching law for many years. Is cultural preservation something that the university where you work considers a priority?

DE: I am proud to say that Villanova University has been involved in a number of efforts to preserve the cultural heritage of others. For example, a few years ago, the University was involved with both [preserving mural art](#) on a local and national basis and with [restoring](#) a large seventeenth century Italian canvas of *David and Goliath* painted by the workshop of artist Pietro da Cortona or one of his students, which received a great amount of press stateside and in Italy.

I actually think that it would be a great project for LCCHP to examine how colleges and universities manage their own cultural resources, as well as how they care for the cultural heritage of others in their museums and archives.

KP: Do you think that institutional cross-border collaboration among colleges and universities could expose interested students to the multifaceted aspects of cultural heritage preservation and cultural resource management?

DE: Sure. Some art history majors are exposed [to cultural heritage preservation] at the undergrad level; others come to law school with an interest in the field but no exposure to it. It would be good for *colleges*—not just law schools—to offer a cultural property law course or at least a course that contains examples of cultural property issues; in fact, the professors who teach these courses can invite experts in the field to visit and speak to their students. Undergrad students in the arts could be shown that cultural heritage law is an area that they can go into if they are thinking of attending law school.

KP: So, growing awareness and experience in cultural heritage is part of a continuum?

DE: Yes. Whether we are aware of it or not, each of us brings notions of cultural heritage with us to the classroom or to the legal profession. We each come from a background—whether it is national origin, religion, racial or ethnic identity, or some other type of common factor—that ties us to our personal heritage. At some point, some of us are fortunate enough to learn that these aspects of cultural heritage are not unique to us individually—we are not alone. Rather, we learn that cultural heritage issues pervade society, whether at times of war or peace, in the form of family possessions or public display, and the like. And students can enjoy learning about their *own* cultural heritage as they learn about the role of cultural heritage in their own lives.

They can also enjoy developing art law-related activities at law school. For example, our law students [at Villanova University Charles Widger School of Law] host various programs on art law cases and careers, as well as a [fashion law conference](#). Before exam time, the Art Law Society hosts a Jackson Pollack-style “throw-down” to relieve student stress. It allows students to be creative and exchange ideas in a relaxed environment.

KP: Sounds like a social event that should be at every law school. [laughs]

DE: I agree. The Art Law Society also hosts a well-attended annual Art Show featuring the work of students, staff, and faculty. It's amazing to see the broad range and sheer quantity of talent in our community—and a lot of interest in art and cultural heritage law.

KP: As an attorney, what challenges do you think technology poses to firms that are trying to gather evidence for their clients in antiquities cases? Do you think that paid access to databases, registries, and other forms of tech with a "paywall" discourage the litigation of cultural property cases because the "best evidence" of title is often behind a paywall? What can the legal community, practitioners, and academics do to encourage the development of open source databases and tools?

DE: Let me preface this by saying that I did not encounter this in law practice because cultural heritage law was not part of my practice; I developed my interest in that area after entering academia. That being said, I think that law and law enforcement should put pressure on the right stakeholders to develop open source tech. If a client of a firm thinks that a crime or tort has been committed, the client and its counsel should be able to have access to information and evidence that could help to support the client's claims and vindicate the client's rights.

KP: How can law schools develop curricula that would be most effective at encouraging careers in cultural heritage preservation and honing the skills necessary to be creative and incisive in dealing with its unique challenges?

DE: Interesting and complex question. Cultural heritage is still not offered in many law schools. It is related to many fields, such as intellectual property, a cornerstone for many cultural property issues. The more general areas of property, contracts, criminal law, and trusts and estates are all crucial areas of knowledge for a future lawyer who wants to practice in the area of art and cultural heritage law. Students can establish an art law society if one doesn't already exist.

Law students aren't just English or Poli Sci majors. Those [who go to law school] have also majored in fine arts, studied in a conservatory, studied art history, and the like. If nurtured, those students with some cultural property exposure in their undergrad education, or a personal interest in this subject, may find each other in law school and go on to form art law or intellectual property law societies; they may then encourage member interest by engaging professionals in the field. Students can also create organizations or work within existing organizations to bring speakers to campus and create externships or summer opportunities for interested members. A public international law course is also a great space into which professors can bring speakers who can introduce students to principles of cultural heritage.

A pioneer in this field is Professor Patty Gerstenblith at the DePaul University College of Law, a founder of LCCHP and author of a leading text on art and cultural heritage law. A visit to the [DePaul website](#) will tell you about her work and the evolution of this practice area. DePaul currently offers an [LL.M.](#) in International Law with a concentration in International Cultural Heritage Law and a [Master of Jurisprudence](#) program in Art and Cultural Heritage Law. This conception of what an advanced law degree focusing on cultural heritage protection and preservation should look like is the result of a lot of creative thinking and consensus building. If professionals and academics and students and school officials aren't aware of what they could contribute to the development and orientation of this relatively new area of law, then cultural heritage law's potential importance to established areas of the law goes unrealized.

KP: So awareness is something you would want to see students and faculty help raise together?

DE: Yes. You have touched on a challenge in this area: awareness. Not everyone is aware that this area of law even *exists*; in fact, most are not. I agree with you: everyone has to work together to make cultural property law and its applications known. There are texts specifically devoted to how to “globalize” courses in torts, contracts, property, civ pro, etc. If professors can be more creative and proactive, then we could see a trend toward a “globalized” discussion of cultural heritage issues in substantive courses as well. Civil procedure could be a place where cultural property cases can be included because of the prevalence of statute of limitations issues in art and cultural heritage law cases, for example. Certainly tort law. For those interested in cultural property law, it would also be good for students to meet with successful attorneys who are working in this field.

KP: Professor Edelman, you have worked with students who extern at art and cultural heritage law placements, correct? How did this experience help students with their professional development and connecting students with practitioners?

DE: Connecting law students with attorneys who practice art and cultural heritage law helps them to see that this is a legitimate field of practice—and makes them excited about this work as well.

In my international law-oriented first-year legal writing course, for example, I have had attorneys visit or Skype into the class and speak about or oral advocacy or legal writing skills needed for practicing international law—including art and cultural heritage law. I have had individuals who prosecute art crime or are involved in restitution litigation visit the law school and provide a professional perspective on what these future lawyers are likely to encounter and the skills they need to enter and succeed in the field. I naturally incorporated visits from cultural heritage lawyers and visits to cultural heritage-related organizations in my International Art and Cultural Heritage Law course as well. I frequently had students who have had some knowledge of and a passion for cultural heritage preservation before entering school.

Everyone has cultural heritage in their personal history, so it’s a field that captures students’ interests emotionally. When you read about the recovery of art looted by the Nazis and reunited with a sole heir, or hear about cultural destruction in the Middle East, it grabs you. When you read about the efforts that people go through to do everything they can to have property returned to their families, you cannot help but be moved.

KP: Is cultural heritage law therefore a field that requires a high degree of empathy and a strong degree of emotional intelligence to be successful?

DE: Yes. Students who spend time understanding and honing the types of “soft” skills used by attorneys in cultural heritage cases will see that empathizing and getting courts to empathize with heirs and owners who have suffered losses of treasured family or community possessions is time that is well spent. You learn how to make facts into a narrative about flesh and blood people and their motivations and memories, not just the objects themselves.

KP: What is your favorite part of teaching a course on International Art and Cultural Heritage Law?

DE: It is probably seeing how excited students get about it. Again, everyone’s family has “culture,” whether it is religious, ethnic, historical, or otherwise. I ask students about their

cultural heritage or their community's cultural heritage. They may talk about a religious item, a piece of art, a cultural site. They read the cases about statues, ancient ruins, modern destruction of cultural property, and see how it applies to their lives. If you can be empathetic to [the loss of] that [heritage], it impresses upon you the desire to develop skills that will serve you well in lawyering and may develop your interest in representing parties in cultural heritage law litigation or transactions.

KP: I see. How do students engage the material? Is there a particular lens through which they view these cases?

DE: Ethics is a major way through which they see the cases. They react when they hear about a museum displaying pieces of art that were wrongfully taken or that may have come to the museum through illegal channels. How did they get there? Who should be held accountable? Were administrators not engaged in due diligence? Is it right to hold some in the chain of title responsible and not others? How does this impact the market for art and artifacts? Would an inappropriate response impose burdens on lawful ownership or importations that may actually incentivize bad behavior? The students see how many pieces of the cultural heritage puzzle are out there and why the field needs people in different areas of law working to solve it. Everything is connected.

I always show the documentary *The Rape of Europa* based on the book of the same name by Lynn Nicholas. We also discuss the stories of the *Woman in Gold* and *The Monuments Men*. Because these two films are feature films and not documentaries, they bring the very existence of cultural heritage law to the general public with popular actors and plots meant to engage the audience. Documentaries, of course, are full of excellent archival footage, sound clips, and interviews with experts or officials who may be unknown to viewers; [these] also expose more people to the field of cultural property protection.

KP: Which cases or cultural heritage studies in your classes invite the most controversy or debate?

DE: I don't know which cases create the most controversy or debate for my students; however, students are fascinated by the story of Maria Altmann and the *Woman in Gold*. It was a saga, for sure, and bittersweet, and the fact that the story has been told in popular film brings the story to a broad audience. Actually, what students most often debate is nationalism versus internationalism. Let's say that centuries ago, something was taken from Country A—and it winds up in Country B. Country A wants it back because it was wrongfully taken and was an important part of Country A's cultural heritage. Country B, however, may also believe that item is a part of *its* cultural heritage because the item has been in Country B for a long time and is now part of Country B's history.

Another interesting topic for debate in the cultural heritage discussion is whether people will have more of an opportunity to learn about cultural heritage in one country or the other. Let's say that Country B, a developed country, takes an artifact from Country A, a less developed country. Country B argues that the artifact will be seen by more people than it would otherwise in Country A. These issues make for great classroom discussion.

A real-world example of this conflict is the one surrounding the Elgin Marbles—as the British call them—but which Greece calls the Parthenon Marbles.

There is another set of events that I have talked about in class before in which England took a living Ethiopian prince, Prince Alemayehu, back to England after defeating his father. The young prince grew up in England but died at the age of 18. The boy prince was buried in at Windsor Castle. Nevertheless, Ethiopia wanted the boy's remains to be returned, but the UK

didn't want to return them because removal of the remains would be disruptive to the site itself. In that case, Ethiopia wanted the prince's remains to be returned because he had been important to Ethiopia's history; however, England wanted to keep the remains because the prince *had become part* of English history—as well as the fact that excavation of his remains would damage another English cultural heritage site.

KP: Good thing that we have [NAGPRA](#). Human remains are a critical yet underappreciated aspect of cultural property that is often not really talked about—I guess because of our discomfort with the very idea of not paying reverence to the deceased. However, it is a problem and certainly one that plagued indigenous communities with grave robbing and desecration, violations that weren't prevented by the passage of the Antiquities Act of 1906 or the Archaeological Resources Protection Act of 1979. These problems persisted because these laws and others were never fully enforced due to the needs of resource extraction, farming, and a kind of fascination or fetish for indigenous remains.

Our nation has seemingly been okay with the reburial of remains being discretionary and not obligatory. After a farmer would find a femur on his land that was once a Native American burial site, the discovery was treated as the finding of a "curiosity," and it was subject to common law property laws for a long time. It is good that attitudes have changed and that NAGPRA creates a specific system respecting the familial and tribal ownership of remains and insists that institutions turn over remains for interment that they are not actively engaged in the scientific study of or for which they have no right of possession.

DE: Yes. the Native American Graves Protection and Repatriation Act is a law that at least addresses some of the challenges of balancing communal versus individual or institutional interests in remains and creates a scheme of enforcement to protect and preserve these interests. These interests are often directly opposed to one another. Another of LCCHP's founders who is an expert in this area is David Tarler, who is both an archaeologist and a lawyer.

KP: Thank you for your time, Professor Edelman. We appreciate your insights and hope that universities and law schools continue to get creative and engage their students who might have an interest in cultural heritage preservation, a field that has such professional diversity, especially in law. The next generation of cultural heritage lawyers is in good hands with professors like you. It's been a privilege speaking with you.

DE: Thank you, Khamal.