CULTURAL LAW: INTERNATIONAL, COMPARATIVE, AND INDIGENOUS

Cultural law is a new and exciting field of study and practice. The core themes of linguistic and other cultural rights, cultural identity and differentiation, cultural heritage, traditional knowledge, sports, and religion are of fundamental importance to people around the world, engaging them at the grassroots level and often commanding their daily attention. The related legal processes are both significant and complex.

This unique collection of materials and commentary on cultural law covers a broad range of themes. Opening chapters explore critical issues involving cultural activities, artifacts, and status, as well as the fundamental concepts of culture and law. Subsequent chapters examine the dynamic interplay of law and culture with respect to each of the core themes.

The materials demonstrate the reality and efficacy of international, comparative, and indigenous law and legal practices in the dynamic context of culture-related issues. Throughout the book, the issues are presented at international, national, subnational, tribal, and strictly cultural levels of authority.

James A. R. Nafziger is Thomas B. Stoel Professor of Law and Director of International Programs at the Willamette University College of Law. A former administrative director of the American Society of International Law and President of the American Branch of the International Law Association (ILA), he serves as Chair of the ILA's Cultural Heritage Law Committee. Professor Nafziger is the author of International Sports Law and coeditor of The Cultural Heritage of Mankind and Cultural Heritage Issues: The Legacy of Conquest, Colonization and Commerce.

Robert Kirkwood Paterson is a Professor of Law in the Faculty of Law at the University of British Columbia. He is an editor of the International Journal of Cultural Property and rapporteur of the Cultural Heritage Law Committee of the International Law Association, of which he is a Canadian board member. He has written widely on cultural property and international trade law, most recently as coeditor of Protection of First Nations Cultural Heritage: Laws, Policy, and Reform.

Alison Dundes Renteln is a Professor of Political Science and Anthropology at the University of Southern California. She is an expert on cultural rights, having authored The Cultural Defense and co-edited Folk Law: Essays on the Theory and Practice of Lex Non Scripta. She has also served on the California State Bar Commission on Access to Justice and the California Judicial Council Access and Fairness Advisory Committee.
Cultural Law

INTERNATIONAL, COMPARATIVE, AND INDIGENOUS

James A. R. Nafziger
Thomas B. Stoel Professor of Law
Willamette University

Robert Kirkwood Paterson
Professor of Law
University of British Columbia

Alison Dundes Renteln
Professor of Political Science and Anthropology
University of Southern California
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Preface

The inspiration for this book has several sources. The core themes of linguistic and other cultural rights, cultural identity and differentiation, cultural heritage, traditional knowledge, sports, and religion are of fundamental importance to humankind. They are matters that truly engage people at the grass roots, often commanding their daily attention. The related legal processes are both significant and complex. It is therefore not surprising that a vast legal literature has blossomed concerning themes of cultural activity and artifacts. And yet this intellectual development remains on the fringe of legal and social science education. Courses on issues of cultural law or culture and law are few and far between. To the best of our knowledge, this is the first comprehensive coursebook covering a broad range of these issues.

A first source of inspiration for this book, then, is the need we have perceived to bring cultural law more into the mainstream of legal and social science education. A second, related source of inspiration is the opportunity to offer a more integrated, coherent framework for studying the diverse themes of cultural law. Clearly, there are common threads running through these themes and the related legal processes. Certain rules of tort, contract, constitutional, and administrative law, as well as methods and procedures of dispute resolution, recur throughout the book, regardless of the specific cultural theme. Likewise, we consider the role of international law – both customary and conventional – throughout the book. Although the specific topics of “art law,” “sports law,” “law and religion,” “cultural rights,” “traditional knowledge,” and so on, serve important organizational and analytical purposes, they also minimize the reality of a common framework of cultural law. These discrete rubrics are also misleading insofar as students and practitioners alike may fail to appreciate the possibilities of broader professional specialization in cultural law.

Our effort to develop a suitable framework of cultural law is still a work in progress, but, as a first step, Chapter 1 offers a working definition of cultural law in terms of a set of six relationships between culture and law within which the issues considered in this book could be categorized, although we have not done so. Each of these relationships may be fairly criticized for its breadth, but we believe that, taken together to define cultural law, they offer a constructive and coherent substitute for the vague conjunction, “culture and law.” We also think that this set of six relationships highlights a particularly exciting feature of cultural law, namely the dynamic, evolving development of both culture and law under their mutual influence.
Of course, the very concepts of culture and law have been notoriously ambiguous and unstable over time. We are well aware of the definitional dilemmas. We nevertheless are convinced of the importance and efficacy of acquainting law students and lawyers, on the one hand, and cultural specialists, on the other hand, with the definitional issues and characteristics of each other’s discipline. Lawyers and cultural specialists must work together. A third source of inspiration for this book, therefore, is the challenge of enhancing interdisciplinary understanding and collaboration, for example, by devoting all of Chapter 2 to the contours of meaning associated with the terms “culture” and “law.” To the extent that students and other readers are already familiar with this material, they may wish to skip either Chapter 2 as a whole or parts of it.

A fourth source of inspiration for this book is the importance of demonstrating to students the reality and efficacy of comparative, international, and indigenous law and practices in the real-life context of cultural activity and artifacts. Too often these disciplines otherwise appear arcane or far removed from the immediacy of everyday experience.

A fifth and final source of inspiration for this book is its potential to serve as both a university coursebook and a reference work. We do not claim that the cases, authors’ commentary, and other materials in this book are in any way definitive. We have selected the contents, however, with both classroom instruction and ongoing reference needs in mind. Many of the cases and readings are classics, but some are deliberately outside the box, so to speak, to stimulate further inquiry. We also believe that the index at the end of this book will be useful in the classroom, the professional office, and the library.

We have sought to cover as many cultural themes of legal significance to people around the world as possible without running the risk of superficiality. Inevitably, however, space limitations have required us to limit the scope of a few themes (e.g., music and pop culture) and largely to bypass other possible themes (e.g., theater, dance, and cinema) that are already addressed by regimes of general application, such as those that govern intellectual property and constitutional issues – although specific cultural law is beginning to address those themes as well. We have also relied heavily on English-language materials and comparative and indigenous examples from the English-speaking world.

As in any coauthored work, readers may detect variations of style, but we have done our best to establish a uniform structure and style. In doing so, we have generally adhered to conventional legal formatting, such as by the use of footnotes rather than in-text citations or endnotes, and The Bluebook system of citation. In keeping with the normal publishing practice, we have eliminated most footnotes within the excerpted materials. Those that we have retained, as well as the authors’ own clarifications and explanations, are numbered consecutively within each chapter. Footnote numbers therefore do not necessarily correspond to those in the excerpted sources. Also in keeping with normal publishing practice, we have provided citations to cases, legislation, treaties, and other primary materials only as they become the objects of specific commentary or analysis in this book rather than as they may appear summarily or in lists of examples.

We hope that this volume will inspire others to consider the importance of cultural activities and artifacts in legal processes. We also want to encourage interdisciplinary approaches to the study of law and legal phenomena. Last but not least, we have tried to highlight the significance of analyzing legal processes at all levels: international, national, subnational, tribal, and strictly cultural. Cultural issues are ubiquitous, and the related
law is of growing significance. As time goes on, we trust that students and practitioners alike will help expand the range of issues and our understanding of the alternatives for resolving them.

James A. R. Nafziger
Salem, Oregon

Robert Kirkwood Paterson
Vancouver, British Columbia

Alison Dundes Renteln
Los Angeles, California
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