

WYWIAD

Wywiad z prof. Sonią Katyal Sonia Katyal Talks to Alicja Jagielska-Burduk

Professor Sonia Katyal is a Chancellor's Professor of Law and Co-Director of the Berkeley Center for Law and Technology, in addition to serving as the Distinguished Chair of the Haas Institute LGBTQ Citizenship research cluster. Prof. Katyal is well-known for her work in the fields of technology, intellectual property, civil rights, and gender and sexual orientation; in particular, the areas in which these disparate fields overlap. Her publications include *The Numerus Clausus of Sex*, *Technoheritage*, and *Property Outlaws*.

Your career as a scholar is breathtaking. So far, you have been involved in both the practice of law and legal research. You have also served as an associate dean for research at Fordham Law School. Which part of your job do you find most interesting and inspiring – working with students, conducting research projects, or perhaps something else connected to leadership in the functioning of the university?

Thank you for the compliment! I am fortunate to enjoy all aspects of my job – writing, teaching, and collaborating with my colleagues. I particularly enjoy working with young people – hearing their ideas, and watching them learn about technology and its implications for legal regulation. Of course, thinking about abstract ideas and how to frame arguments in research can be very exciting too, and so I'm particularly thrilled about the projects I am working on – some of which involve trademarks, some of which involve technologies and new media in museums, and some of which involve thinking about gender through the lens of technology.

Nowadays, there are many particular training sessions and courses for researchers concerning soft skills and personal development. In 2016, I participated in the W30 Program *Developing Women Leaders in University Administration* in partnership with UCLA Anderson Executive Education in Los Angeles. It was a unique experience.

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The aim of this project is to prepare women in university administration for leadership positions of increasing responsibility in the field of academia worldwide. Many researchers decide to take courses on Project Management to obtain more managerial skills. What do you think about this trend?

I think the trend towards women taking on greater roles in leadership and leadership training is very exciting. There are so many ways in which gender diversity can play a powerful role in building more tolerant and more inclusive organizations. The trick is to make sure that there are positions available for women to take on more management-oriented roles, and also to support women as leaders in every possible way. This means ensuring ongoing training, support, and mentorship for women – both as they become leaders, and also when they ARE leaders.

In the article *Encouraging Engaged Scholarship: Perspectives from an Associate Dean for Research* published in *Fordham Law Legal Studies*, you mentioned: “[A]s scholars, we need to broaden our value of other types of publications as well, and embrace other forms of nontraditional scholarship that has, as Williams pointed out, a real world impact and a broader audience than the typical law professor, law student, or legal scholar”. In the 2017/2018 term, the Santander Art and Culture Law Review team is working on a new project titled “Law & Culture TV series” on YouTube within a national program for cultural education initiatives. The project foresees preparing ten shorts, up to four minutes long, containing lectures about basic legal issues in the Polish cultural sector (a museum as a cultural institution, an auction phenomenon, etc.). What do you think of using YouTube channels in cultural education?

This sounds very exciting, and I look forward to seeing it come to fruition.

The American Nations Law plays a crucial role in cultural heritage law evolution. Its development is very important not only for American researchers, but also for other foreign scholars. The American Nations Law touches the core of cultural heritage issues: the rights of indigenous people, property issues, and last but not least, human rights. How do you think this area of law could influence future cultural heritage regulations in the United States and, in a broader sense, national and international lawmakers?

One way in which First Nations law can be incredibly powerful is as a vehicle to protect international and domestic cultural property. Tribal self determination is a core aspect of this framework – that is, allowing tribes to govern themselves, and then using First Nations and federal law to protect their efforts. Using the framework set forth by tribal self determination, internationally, can be a powerful way

to empower indigenous groups in other nations. Even if tribal self determination is not attainable immediately, using a framework that supports tribal autonomy and authority is essential to the preservation of indigenous cultures and frameworks.

One can put forward numerous arguments in favour of the view that cultural heritage cannot be treated on an equal footing with other goods. These include the discussion on cultural rights, rights of indigenous peoples to their material heritage, the security of cultural heritage potentially threatened by terrorism, and strengthening of international cooperation (e.g. the Internal Market Information System, which allows EU Member States to cooperate and exchange information on cultural property). What do you think about opinions that cultural heritage could be treated a separate legal category? This long-running debate on the legal status of cultural heritage started when Richard Crewdson formulated the fundamental question about a new category: "Cultural Property as the Fourth Estate?" ("Law Society's Gazette" 1984, No. 81).

In reflecting on this very important question, there are two observations that come to mind. The first is that cultural property can be conceptually and doctrinally distinct from other areas of property ownership because of the collective loyalties associated with its protection. At the same time, however, cultural property comprises many other areas of property – intellectual property, real property, etc. However, at all times, the collective aspect of cultural property's loyalties often requires special, and often primary consideration over other types of property claims. A great example of this is the *Bulun-Bulun* case in Australia, where the court recognized a concept of collective responsibility in copyright.

The longest question concerns a very important matter in Poland. In December 2016, the Princes Czartoryski Foundation sold to the Polish state a collection of artworks which had been part of the former *Ordynacja Sieniawska*, the fee tail estate of *Sieniawa* established by this aristocratic family. The estate was established in 1896 as an indivisible and inalienable property in the form of a trust (*fidei commissum*) managed by the descendants of the founder, according to the principles laid down in its constitutive act. In 1939, an act of law was passed which abolished all such estates existing in Poland. Ultimately, in 1945 art collections came to be managed by the state, albeit without being deprived of the status of private property. After 1989, the ownership of the collections of the Czartoryski family was passed to the Princes Czartoryski Foundation, following an agreement with the beneficiaries of the founders of the trust. The Foundation's mission was to take custody of and manage the collections. The Foundation currently runs a museum and a library. One of the most valuable objects in the collection was the painting *Lady with an Ermine* by

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Leonardo da Vinci, the most precious work of art held in Polish collections. There are less than twenty oil paintings by this artist in the world. Only one painting, *Ginevra de' Benci*, is held by the National Gallery of Art in Washington. Experts in the field of cultural heritage protection on many occasions offered differing opinions regarding the principles governing the custody of this painting, including its frequent travels on loan to foreign exhibitions (which are potentially threatening to the painting's state of preservation). The sale of the collection to the Polish State has put an end to the disputes concerning the ways in which the collected artefacts should be used. The management of the collection has thus been transferred to the National Museum in Krakow, a state-owned cultural institution. The sale of this private collection marks an important moment in the discussion surrounding the search for an effective legal regime for the most valuable components of cultural heritage, and indirectly makes a determination on the role of private and public actors in the protection of cultural heritage in Poland. Keeping in mind the case of *Lady with an Ermine*, do you think we need a special (international or national) legal regime dedicated to masterpieces? In our opinion, such a shift towards public ownership is a good move, as, for example, in the United States most museums are privately owned; or we should appreciate both ways of managing cultural heritage, by public and private owners?

This is a complicated question, one that we deal with in the United States as well. It underscores the difference, it seems, between 'property in peoplehood' (a concept we articulated in a Yale Law Journal piece called *In Defense of Property*), an idea that relates to cultural property, and Margaret Jane Radin's notion of "fungible" property. When does valuable art implicate the notion of cultural or national property, when does it implicate cultural property, and how do we navigate the differences between them? This is a difficult question, one that does not have an easy answer. One has to explore the role of context, and of culture and national property, in a balance. In the end, I think that the outcome was the right one, especially since the owners also wanted the artwork to stay in Poland, but one could easily imagine a different outcome that would raise even more complex questions if the owner's motivations were different (and more motivated towards profit). In the end, I think we will see more examples like this one, and hope that they are resolved peaceably and with attention to the very complicated issues that each unique circumstance raises.

Useful link

J. Berendt, *Poland Buys Czartoryski Family Art Collection*, "The New York Times", 29 December 2016, https://www.nytimes.com/2016/12/29/arts/design/poland-buys-czartoryski-family-art-collection.html?_r=0 [accessed: 18.11.2018].