Banking (On) The Brain
The Neurological in Culture, Law and Science

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This project focused on questions relating to conceptions of the brain embedded within brain bank practice, the impacts of these on law, and the legal and cultural traction of the knowledge produced by brain banking. The investigators found that despite the significance of issues and concerns between brain banks and other types of biobanks, dialogue about the ethical, legal and cultural aspects and implications of the work in these domains remains limited.
Our research exposed how the differences between intellectual traditions can be leveraged to animate new interdisciplinary conversations and new initiatives, ultimately leading to innovations, most particularly around how this cultural/scientific practice might be managed.

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Through cross-disciplinary investigations around the governance of brain-banking, this project explored interactions between the arts and humanities, science, and regulation.

Structuring questions included:

• To what extent does science reflect arts and humanities conceptions of the brain?
• Do these conceptions shape the law?
• Might scientific knowledge impact on popular understandings of the brain and/or inform/influence the law?

The overall aim was to consider the impacts of different conceptions of the brain on law in a preliminary manner.

Through surveys of literatures developed in a range of arts and humanities traditions, the investigators found that, like historical conceptions of the heart and more contemporary notions of the eyes, the brain has special cultural significance, although the source and the significance of this ‘specialness’ is extremely diverse and underexplored. Further, while the brain is (perhaps uniquely) tied to identity and individuality, it is not well understood, from either functional or health perspectives.

The project found that the brain is salient in legal debates around findings/definitions of death, injury compensation, and assessments and deployments of evidence in a range of legal subject fields, but it is treated like any other tissue/organ when it comes to the regulation of scientific activities (i.e. it does not have bespoke regulation). Brain banks are governed by de jure law (legislation) and de facto regulation (regulatory and professional codes of conduct and routinized practice), and there are key legislative differences within the UK which are not being (appropriately) operationalized. Additionally, and importantly, despite commonality of challenges between brain banks and other types of biobanks, dialogues around their ethical, legal and cultural aspects, implications and challenges remain extremely limited. Finally, the neurological knowledge which brain banking underwrites is contributing to the development of ‘neurolaw’ – a discursive realm within which there is often a poverty of understanding of the scope and limits of neuroscience and brain banks on the one hand, and of the practice and meanings of law on the other.

The project gathered diverse stakeholders from the brain banking and nascent fields for detailed discussions, but it must be viewed as a pilot, a first step toward greater and more sustained interactions. In the absence of this, disjunctions will not be identified or interrogated, and the social picture around brains, and the practice of science and it’s regulation through law and other social institutions will remain incomplete with the consequence that confusion and suboptimal practices will persist, and the science (on which we have placed great expectations) will not deliver on its promise.