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Cultural Heritage: property of individuals, collectivities or humankind?

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Abstract

Knowledge that gives meaning to practices, objects and land is often specific to, or associated with, certain groups. Transmitted through generations, it is regarded as cultural heritage to which members can assert privileged claims. This knowledge is often displayed and transferred as cultural property through symbols, as a means of communicating social networks and for securing a ceremonial dialogue with the supernatural. Depending on the context, cultural property can be imbued with additional and more complex meanings. A cultural tradition is today often promoted or even invented as a way of legitimising native claims to territories or other resources, or a cultural tradition can be turned into an economic resource or commodity itself, when its use becomes restricted or a matter of privilege. This paper seeks to explore the extent to which a particular cultural tradition, or parts of it, can be interpreted as the exclusive property of certain individuals or collectivities, or when, in contrast, it may be seen as the cultural heritage of humankind. The question is whether flexible concepts of ownership may better reflect the often multiple origins of a cultural tradition and shared responsibilities in maintaining it.

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Introduction

Whether culture should be maintained as a key concept in anthropology has been hotly debated in recent years. While some have argued that it should be modified, others would drop it entirely, a debate carried out most recently at the Wenner-Gren symposium in Morelia, Mexico, in September 2000 (Fox and King 2002). This paper ties into that ongoing discussion by problematising a particular aspect of culture, the concept of culture as property.

One of the greatest weaknesses of the culture concept is probably that definitions of culture vary widely, even within our own discipline. Therefore, it seems helpful to begin with a definition of culture and create some common ground for what will follow. Culture is understood here as knowledge or ideas that give meaning to practices, objects and land. This knowledge is often specific to or associated with certain groups. It is transmitted over generations and becomes a cultural heritage over which members of that group may assert privileged claims. These possessions, sometimes perceived as inalienable, may include ritual practices or specific economic activities. They can be objects with particular relevance for creating and maintaining ethnic identities, or they can be certain lands interpreted in terms of a particular worldview as sacred sites.

Tangible versus Intangible Property

Property relations can, according to Hann (1998: 4), probably best be viewed as social relations between people with regard to something else. I would like to expand this concept a bit further to include relations between persons and the supernatural, as this is a prominent feature in native thought. The kinds of properties to be focused upon here fall under a category that Weiner (1992), in her critique of Lévi-Strauss's and Mauss's overly generalist and positivist view of reciprocity and exchange, has called inalienable possessions. For Weiner, keeping certain goods out of the circle of exchange and the manipulation of these circles works against the erosion of collective identities and can be a demonstration of power. While Weiner tends to concentrate on material objects, Harrison (1999: 240) expands this concept to include symbolic practices. He refers to practices that need to be protected from unauthorised copying or reproduction, or what he calls “piracy”.

Here we are faced with the distinct qualities of tangible and intangible property and the complicated strategies for protection with regard to the latter. While tangible property can be dealt with relatively easily, since objects can only be in one place at one time, intangible

property such as knowledge and thought is continuously in flux over space and time, or, in the words of Brown, "volatile, promiscuous and elusive" (2001: 10).

Are Western Concepts of Intellectual Property Rights Appropriate to Native Contexts?[2]

Accelerating globalisation, and new information technologies especially, confront us almost daily with new examples of the unauthorised use of intellectual property and respective strategies for control. There are cases in which traditional knowledge should be protected by means of western copyright law, so that, for example, native people have a chance to claim their share of the profits that foreign companies earn in its application. Native environmental knowledge used by the pharmaceutical industry is one such example. However even in the western world, intellectual property (defined by trademarks, patents and copyrights) is still full of ambiguities. On the one hand, the result of intellectual labour and time invested has to be acknowledged and rewarded; on the other hand, the free flow and use of ideas is the essential stimulus for human creativity and innovation. One of the basic problems of intellectual property law is, perhaps, that every product of intellectual labour or invention builds upon the ideas of predecessors. This often makes it difficult to define from what point onwards the innovation of a particular individual or team in a chain of numerous innovations begins or ends.

The application of western intellectual property concepts or laws can be even more problematic in native societies. There are at first glance obvious similarities to copyright-like practices among native peoples. Stories, songs, myths, dances and certain ritual practices are often understood as the property of individuals or collectivities who might have the exclusive right to use and to transfer them. But, upon closer examination, fundamental differences appear. First, the above-mentioned historical dimension connected to knowledge or ideas is recognised in traditional native contexts, or at least in those that I observed during my earlier work among the Kwakwaka'wakw and in Kamchatka. This implies an obligation to the ancestors or the supernatural, to treat this heritage carefully with regard to future generations. The thought of breaking this chain, for example, of cutting out a segment for commodification or taking the sacred into the profane is unacceptable, although all community members do not

[2] This should not be misunderstood as a dichotomy between "western" and "native" concepts, but as more or less general orientations in thought and practice, which differ to the extent that these are based on particular cultural traditions. In the following, the variation between such ways of thinking *within* native communities themselves will be stressed, as this provides important clues for understanding the complexities of local cultural property debates.

necessarily share this belief. Interpretations of cultural heritage can vary in rapidly transforming social settings, which is reflected frequently in generational conflicts on such issues. This historical embeddedness of cultural property from a native point of view means that western copyright law, which normally expires after a certain period of time, profoundly contradicts such principles.

Secondly and perhaps most significantly, native intellectual property rights are usually not spelled out contractually, i.e. by formal laws. They tend to be flexible and renegotiable. Here we have perhaps an important key for cross-cultural misunderstandings that arise when we try to impose our western models of property rights on native societies or vice versa. In the following, I would like to explore this last argument further using some concrete examples.

Native Settings in Dealing with Property Relations

Northwest coast Indians or the First Nations in the Canadian Pacific Northwest, as they like to call themselves, are famous for their political system of elaborate ceremonies, such as the potlatch, in which they work out, among other things, property relations within and among native communities. The potlatch provides a public arena in which social relations, status and property claims to hunting, fishing or gathering grounds, among others, can be demonstrated, manipulated and continuously renegotiated (Kasten 1996: 314-316). This is done in a symbolic discourse by the use of songs, dances and the demonstration of important relationships with the supernatural, the latter being shown in the form of masks and other regalia. These performances and objects represent a particular relationship with a supernatural being, which, having transformed itself into a human being at a certain location or physical place in ancestral time, legitimises the claim of a certain family group to that territory. The individual may alternatively maintain a special relationship with another supernatural being residing on the bottom of the sea who is in control of the annual fish-runs.

This means the economic well-being of individuals or groups is connected in important ways to the sets of relations that each and everyone maintains to the supernatural. These relations, represented symbolically in songs, dances and objects, are understood to be "owned" by these individuals or groups. They can be individually owned, for example, in the form of personal spirit helpers acquired through individual spirit quests, although this concept is more common to groups in the interior. More often the indispensable relations to the supernatural are established through collective initiation rites, into secret societies for example, a principle more prominent on the coast, although both concepts mix with one another and vary from group to group.

When attending a potlatch today, one can still see how relationships with the supernatural and access to economic resources connected to them are manipulated and renegotiated. For example, a dancer may use a mask or a symbol which copies or is close to a symbolic representation of another performer, usually a clear violation of native property law. He would only risk this violation after he had found out, discretely in advance or during preceding "potlatch conferences", as they are called today, that public opinion would be on his side or at least would not indict him for this transgression.

One of the most striking features of these symbolically communicated property relations is that they are consciously kept flexible. Anything that would "freeze" such an open discourse, for example the recording of a sequence of events, either on film or video, is avoided or explicitly prohibited. This might also explain why formal laws or written contracts often do not have the same binding character in native as in western societies. They are often just as alien to them and to their cultural tradition as the flexibility and renegotiability of native agreements would be to our tradition.

This raises the question to what extent these two different systems of property relations can or must merge when agreements are made cross-culturally. Native leaders must certainly develop talents to negotiate this divide, which often transverses state and customary law, although the solutions they put forward frequently alienate them from grass-roots community opinion. There are, additionally, often as many customary laws as there are differing interpretations of a community's cultural heritage, which will be shown in more detail in the following.

Extended Meanings of Traditional Property Concepts

An important feature of the cultural property debate is that presently, most native people increasingly *live* multiple identities and many of them are quite capable in *interpreting* such identity selectively, by promoting a local cultural tradition as indispensable or the use of it as an exclusive right whenever it appears opportune. This brings us to the commodification of cultural heritage for personal benefit and its political instrumentalisation for native political claims.

Even if the ways in which cultural property concepts are occasionally used in this regard seem bizarre or annoying at times, one should be careful with hasty or unfair judgements and generalisations. There is extensive and continuous variation in how individuals interpret their cultural heritage in the same way that culture in general varies over time and space. Barth

(2002) pointed out only recently that there is no one-to-one identity between idea and manifestation, cultural construction and event.

How differently the same cultural event can be simultaneously interpreted, depending on the varying interests of the participants, can be seen, for example, during most of the revitalised or reconstructed ethnic festivals in native communities in the Russian North. One of these is the annual Alkhalalalai-feast among the Itelmen living on the west coast of Kamchatka. In some dances the elders, imitating animals vocally and in body movements, may still express the same intimate relationship to the supernatural as I have described in the Northwest coast dances. These dances may take place only a short time after a professional Itelmen ensemble has performed a staged shaman ceremony, reconstructed from the 250-year-old accounts of Georg Wilhelm Steller, including his religious-pietistic interpretation of such ritual behaviour. Such reconstructed symbolic practices are presented to foreign guests and are understood as being the proper cultural tradition of the Itelmen people, performances that they do not like to see being copied by others.

Most informative, however, are the speeches at the end of the festivals ('potlatches'), in which participants representing various parts of the community comment upon and interpret the event. Representatives of native organisations link such promotion of native identity to current political agendas in various ways, such as claims to self-government, territory, and access to resources. Local enterprises, which sponsor prizes and gifts in the form of household goods or less utilitarian items, display their support of native traditions with a paternalistic attitude that reflects present forms of Soviet or pre-Soviet patron-client relationships. Another group of agents, the representatives from different levels of district and regional administrations and governments, stand for prior Soviet traditions of incorporating native heritage into the political propaganda of the state. They are reminiscent of former Soviet institutions, such as the so-called "agitation-culture-brigades", which toured outlying villages and reindeer-herder camps, wrapping the Soviet message in performances of local cultural traditions and identities.

At times it becomes difficult for native leaders to get their message taken seriously under complex political conditions. In 1997, there was an obvious conflict of interest when an Itelmen leader opposed sending an Itelmen ensemble to join in the all-Russian ethnic festival in Moscow, celebrating the surrender or the joining (depending on one's point of view) of Kamchatka to the Russian Empire 300 years ago. The leader, who is notorious all over Kamchatka for his vigorous propagation of native self-government, turned down requests from the ensemble to go to Moscow to celebrate an event that "led to the colonisation of his people", as he repeatedly referred to it. The ensemble naturally wanted to go to the Moscow

festival, as this not only meant prestige but also a source of income. His boycott had only the effect that an ensemble from another Kamchatkan ethnic group jumped on the plane to take the Itelmen ensemble's place. This event is informative, as it illustrates the conflicts of interest and, in this case, the eventual clash in the course of the political instrumentalisation of a cultural tradition under shifting political alliances.

Another example of how cultural property can be interpreted differently by various agents who all claim to own and use the same tradition for their particular aims, is given by Barbara Isaac (2000) when she summarises some of the experiences the Peabody museum has had with NAGPRA, the Native American Grave Protection and Repatriation Act of 1990. After the museum had repatriated the remains of over 2000 people to a native pueblo community in New Mexico, a reburial ceremony was held there. The reaction on the grass-roots level was of deeply felt satisfaction of a very personal, spiritual need. The same event was then used by representatives of various pan-Indian organisations for their political rhetoric. They termed the event a "political victory", as this meant "cultural and political recognition for Native Americans, which mirrors the efforts of indigenous people world-wide".

Beyond political instrumentalisation, another extension of the concept of cultural property can be found in the commodification or the commercial use of a cultural tradition or parts of it. I have already mentioned the potential conflicts and disruptive effects for native communities when, at times, commodification implies the blurring of distinctions between the sacred and the profane, although such commodified exchange is, of course, not a recent phenomenon. The claiming of personal or collective ownership of a certain tradition often corresponds to the simple business principle of increasing one's profit by turning a product into a limited good.

On the other hand, even commercialised native art traditions such as Chukchi and Yup'ik ivory carving, Saami reindeer horn art or Northwest coast Indian wooden art stimulate the younger generation to occupy themselves with traditional cultural motifs and ideas and facilitates the survival of cultural traditions, even if in a different form. This furthermore creates important income for native people, especially in the remote communities in the Russian Far East that find themselves today often on the edge of economic collapse. There is no doubt that native art traditions must be supported by seeking flexible solutions for making native artists competitive on global markets. How one qualifies him or herself as a *native* artist can be problematic, however. In particular, the growing number of artists who live away from their communities might be tempted to use a self-declared ethnic affiliation as a business tool, without taking responsibility for those communities. Nor can the community, eleven time zones away in some cases, control how these individuals represent them.

Searching for authenticity in native art, music and dance is no longer a fruitful analytical tool for anthropologists. The extremely multi-faceted kinds of native artistic expression, based on increasingly complex cultural experiences and identities and the variety of contexts in which the works and performances gain different meanings, make this impossible. Interestingly enough, however, native artists still use the trope of so-called authenticity in competition among themselves and in their attempts to impress foreign audiences, consumers or even ethnographers.

At times, problems may arise on the local level if cultural property is interpreted differently by individuals, be it in a traditional or in a western way. I witnessed such conflict during the recording sessions for one of my CD-productions (Kasten und Dürr 1999). Traditionally oriented performers were always eager to point out from whom they had learned a particular song, the acknowledgement of which needed to appear in the commentary on the CD. In contrast, modern professional dance ensembles did not always follow that etiquette. In one case a certain melody was re-arranged for synthesizer by a professional Even dance ensemble, for which the composer had to be credited. In the course of later research it became clear that this song and dance was based on a family melody from a north-eastern coastal Koryak group from Karaginski *rayon* (district). It had even been falsely identified by the ensemble as *Nymylanski*, crediting a different sub-group.

In other cases, however, western-type copyright does make sense. David Koester is involved in a valuable project assisting a native Itelmen composer in publishing his songs in the form of a book of music, since the artist was complaining that his compositions were being played all over Kamchatka, even for commercial use, without crediting him. These compositions were not based on particular family melodies but employed native and non-native lyrics and melodies and were composed for accompaniment by a Russian accordion. But the question remains, where does one draw the line between “piracy” and the result of truly creative work by an artist, as in the latter case?

Rigid legal norms and ethnic legitimisations entitling a certain ethnic group to use a particular tradition as its exclusive property is questionable for other reasons. We have seen that intellectual property law can be controversial, as any intellectual work builds upon the knowledge and ideas of others. This is even more true in native art and handicraft traditions, the origins of which can almost never be traced to a single native group alone. On the contrary, native arts and crafts have typically begun to flourish when new materials, techniques or ideas entered into a community. A well-known example is the Navajo rug as described by Brown (2001). In the Spanish colonial period Europeans introduced sheep to the American southwest, without whose wool these rugs could not be woven. Anglo-American

traders later provided basic designs and colour schemes. For Brown, "the artistry of Navajo weaving arose from a cultural conjunction: mercantile and aesthetic, European and indigenous" (2001: 18). Numerous other examples of this kind can be found all over the world. Consequently, most arts and handicraft forms are part of a shared heritage and a common historical experience, which cannot be denied by trying to declare such traditions, as in the case of the Navajo rug, as the exclusive cultural property of one or another group.

Shared Cultural Heritage as the Property of Humankind?

Native peoples' strategies of declaring, as their exclusive property, traditions that should in reality be understood as a shared cultural heritage of various groups or peoples or, to a certain extent, of humankind in general, present a dilemma for promoters of native rights and for global cultural agencies such as UNESCO. Anthropologists have, since at least the 1970s, sought to distance themselves from what Thomas Hylland Eriksen (2001) has called the "archipelago idea of culture", the idea that the world is made up of cultural islands, each discrete and bounded. But for asserting their cultural rights in negotiations with states and international agencies, native activists are often forced to maintain and mobilise such outdated concepts of imaginary boundaries. These arguments stand in contrast to current UNESCO ideas of a world made up of cultures in which diverse populations exchange ideas, learn cultural practices from one another and produce hybrid forms of culture, an interpretation that enables and encourages people to draw creatively on this diverse cultural reservoir.

There is the concern that more recent initiatives by foreign or global organisations (such as UNESCO) to take responsibility for the care of some kinds of local cultural property would lead to the appropriation of decision-making power from those local groups who have so far been in control of them. Such global initiatives are usually exercised, however, whenever local traditions are threatened by other more powerful outside forces, such as when mining enterprises may encroach upon sacred lands. Certainly there is the risk that the global indigenous organisations involved may take over certain decision-making powers from local people, as in a current sacred sites project in the Russian North, but the trade-off is that this can mean effective protection of such places for future local spiritual practices.

In a similar way, and perhaps most importantly, the growing perception of certain kinds of cultural property as a particular kind of property of humankind does imply a shared responsibility to maintain it, as such traditions are often in danger of disappearing. I would like to mention here only the current global efforts to preserve endangered languages.

Linguistic and cultural diversity is seen as a prerequisite for innovation and as essential for human existence in the long run.

Additionally, concepts of joint responsibility and ownership encourage cross-cultural collaboration. Why, otherwise, should scholars invest their time and labour and foreign agencies their financial means if the outcome is then considered the exclusive property of others? On the grass-roots level, most native experts who are seriously concerned with the real issue of preserving native knowledge see the clear benefits of such collaboration based on face-to-face encounters that lead to negotiated agreements. This collaborative method is more effective than formalised law and its political rhetoric, which will more likely than not hinder or even block that collaborative dialogue.

The last decade has brought many impressive examples of how the shared responsibility for native cultural heritage has led to true repatriation of native knowledge that had been appropriated from them in the past by foreign museums and academic institutions, with the justification and promise that it would be for the enhancement of science. I would like to mention here only the outstanding contributions by Ann Fienup-Riordan (1998) and Igor Krupnik (2000) who, through their collaborative work with Alaskan and St. Lawrence Island Yup'ik groups respectively, provided the local communities with complete recordings of their oral traditions in the form of comprehensive books. In both cases, such joint projects, which evolved from shared concerns for maintaining local traditions, even led to an enhancement of traditional cultural knowledge and the appreciation of the participating native communities.

My own current work in Kamchatka is similar. I am, together with a native scholar and an ethnolinguist from Berlin, re-editing Itelmen texts, which Jochelson had recorded at the beginning of the last century. Many of the stories themselves have disappeared in the last few decades. The recorded texts have to date only been published in a Latin-based Itelmen script and were not understandable to local Itelmen. In a sense, these texts had become the property of foreign academics. These texts will be edited now in a contemporary Itelmen script so that they can be used in schools for example, with Russian translations for those locals who no longer speak the language. To many local people and regional administrations, this is seen as true repatriation. Physical repatriation alone in this case, for example, the mere transfer of the Jochelson manuscripts, would have meant nothing to the community, even if it could have been proclaimed by some as a “political victory”.

If we are to deal with repatriation, we should concentrate on making appropriated local cultural knowledge available again to local communities. This seems to be more important and effective for keeping endangered cultural traditions alive than the mere transfer of material manifestations of such knowledge, such as museum objects, alone. In this respect,

the term "repatriation" becomes highly contested in and of itself, as it does not reflect the basic premise of sharing the enhanced knowledge that often evolves from such processes as described above. On the contrary, the term "repatriation" commonly evokes immediate fear and resistance, as it alludes to something being taken from somebody to be given to someone else. This creates from the outset a conflict situation, whereas flexible ownership concepts encourage cross-cultural research partnerships. These can deal more effectively with cultural property rights and produce more productive results, as we have seen above, that benefit both sides, bridging the gap between at times questionable claims of repatriation and forms of earlier appropriation of native knowledge for the sake of science, which are no longer acceptable today.

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