

Book review

Michael F. Brown. *Who Owns Native Culture?* Harvard University Press, Cambridge (2003) 315 pp.

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In *Who Owns Native Culture?* cultural anthropologist Michael F. Brown traces issues related to the ownership and worldwide circulation of indigenous art, music, ceremony, and biological knowledge from the late 1980s to the early 21st century. Brown interviewed indigenous and non-indigenous cultural resource managers in Australia and the western United States, and he also engaged in textual analysis of legal and other official documents as they pertained to the intellectual property concerns of/about people indigenous to the U.S., Australia, New Zealand, Canada, and a number of countries in Africa in an attempt to “weigh indigenous claims of cultural ownership against broader society’s need for open communication” (p. xi). After studying multiple instances of indigenous intellectual property infringement allegations and weighing the issues related to negotiating different worldviews of ownership, positioning culture as property, and legislating the exchange of cultural information, Brown ultimately advocates for a “balance between the interests of indigenous groups and the requirements of liberal democracy” (p. 9). Brown further suggests that this can be accomplished via localized alliances that negotiate and support indigenous cultural integrity rather than “one-size-fits-all” total heritage protection legislation. Although I am not convinced of the efficacy of Brown’s proposed balance, *Who Owns Native Culture?* offers computers and writing scholars (as well as scholars in Rhetoric and Composition, and American Indian Studies) a timely, compelling, and invaluable resource for understanding, challenging, and extending Western notions and rhetorics of intellectual property (and copyright, trademarks, patents, trade secrets, public domain, and fair uses).

Brown establishes the exigency for this investigation by introducing recent stories of indigenous leaders and advocacy groups speaking and acting globally in ways that justify and support the self-determination and recuperation of indigenous cultural patrimony (e.g., art, symbology, music, dance, language, folklore, spirituality, landscapes, medical knowledge, etc.). As a result, countries such as New Zealand, Australia, and Panama have implemented legislation to protect the intangible, unalienable resource of indigenous heritage and to restrict the access that those who traffic cultural information have to this resource. The arms of the United Nations (e.g., UNESCO and the Working Group on Indigenous Populations) are working toward developing far-reaching heritage protection standards as well. These recent developments toward legislating heritage protection raises questions and concerns for Brown. For example, he asks: Is it logical for ethnic groups to position their cultural practices as property and prohibit others from studying, imitating, and modifying those practices without permission? Further, he is concerned about the future of the public domain, pressured by both the “privatizing logic of the world’s corporations” (p. 7) and indigenous rights activists who are promoting novel forms of collective copyright.

In Chapter 1, “The Missionary’s Photograph,” Brown thrusts readers into the controversies surrounding indigenous intellectual property rights and law by describing the case of missionary and anthropologist Reverend Henry R. Voth and his publishing of detailed sensitive information regarding Hopi religious practices, including photographs, in the early 20th century. Although the majority of the 2000+ photographs depict everyday household and agricultural activities, the

photographs Voth captured of Hopi ceremonial practices have been and continue to be disproportionately reproduced in mass media. Through this examination, Brown helps introduce readers to the increasing global concern about the disposition of cultural heritage through the local case of the Hopis and their community values. Brown also situates the Hopi case within a larger history of colonial tensions between indigenous communities and Western anthropologists, ethnographers, ethnomusicologists, folklorists, museum curators, and archivists. Further, Brown appropriately draws attention to the divergences between different sets of ideologies regarding curiosity (or lack thereof) of the spiritual practices of others; proper circulation of cultural knowledge; symbols of shared heritage; canons and codes of secrecy; and cultural privacy, protection, and control.

Chapter 2, “Cultures and Copyrights,” weaves together recent examples of copyright infringement suits initiated by an Aboriginal artist against Australian manufacturers and retailers (the 1997 case of *Bulun and Milpurrurru v. R & T Textiles*) and an Aboriginal claim of native land title against the Australian government (the 1992 case of *Mabo and others v. Queensland*) in a way that demonstrates the inextricable ties between traditional Aboriginal art and evidence of land tenure. At the heart of the 1997 *Bulun and Milpurrurru* case is that the community of Ganalbingu people had rights to their traditional designs and that those designs were tied to rights in land. The chapter generates questions and concerns related to joint rights in traditional knowledge, the licensing of that knowledge for reproduction, the relationships between individual artists and the communities from which they work, and injecting the sacred into copyright and vice versa. In Chapter 3, “Sign Wars,” Brown further interrogates the Nation-state’s and community-corporation’s intercultural, economic, political, and religious tensions in trademarking sacredness. Brown examines, among other cases, how the Zia Pueblo have responded to the appropriation and commodification of the sacred and powerful Zia sun symbol and how the Rosebud Sioux descendants of Lakota spiritual leader Crazy Horse have filed suit against Hornell Brewing Company (producers of Crazy Horse Malt Liquor) for defamation, emotional harm, and a violation of the “right to privacy”—and how these cases have inspired the U.S. Patent and Trademark Office (USPTO) to “examine its policies relating to the official insignia of Indian tribes” (p. 71).

Chapter 4, “Ethnobotany Blues,” traces the growing global interest in tropical deforestation problems in the late 21st century and how ethnobotanists flocked to and collected traditional knowledges from tribal elders and healers, who were positioned as the key to unlocking the biomedical (economic) value of the rain forest. This bioprospecting subsequently led to alliances between governments and transnational drug companies to use this collected knowledge. Thus, Brown demonstrates how in little more than a decade, ethnobotany—defined “as a heroic field dedicated to salvaging useful native knowledges”—had “become for its critics a simple instrument of theft” (pp. 100–101). Interrogating the convergence between intellectual property, molecular biology, agriculture, and pharmaceuticals, Brown examines why some question whether capitalism facilitates the exploitation of traditional indigenous knowledges for high profits (while native peoples receive no discernable benefits themselves).

In Chapter 5, “Negotiating Mutual Respect,” Brown describes conflicting perceptions of public–private access to and ownership of sacred indigenous sites, including the Bighorn Medicine Wheel, and Devils Tower, WY, and Chimney Rock, CA. Brown introduces a variety of stakeholders related to each sacred site and some of the ideologies that shape their relationships to the sites and the related controversy. Ultimately, he advocates for volunteerism, thoughtful dialogue, and mutual respect among and across the sacred site stakeholders to reach compromises between those who want to gain access to the sites and those who “own” the sites. Brown extends this discussion in Chapter 6, “At the Edge of the Indigenous.” Here he describes the actors involved in the public struggles over definitions, evidence, and protection of indigenous heritage in the context of interrogating the cultural ties (or lack thereof) of the Ngarrindjeri people to Hindmarsh Island, Australia, and the Chumash to Point Conception, CA. Such interrogation, he argues, is required to affect policy discussions regarding these vulnerable sites.

In Chapter 7, “Native Heritage in the Iron Cage,” Brown turns away from his case studies and moves toward a critical assessment of a broad-gauged approach to heritage protection legislation (which he dubs *Total Heritage Protection*), calling for a middle-ground approach that is more creative and flexible for all stakeholders. Some of the legislative work that contributes to this total heritage protection approach includes the 1990 U.S. Native American Graves Protection and Repatriation Act (NAGPRA), the 1990 Indian Arts and Crafts Act, the Native Alaskan Silver Hand program, and the 1997 U.N. *Protection of the Heritage of Indigenous People* document (a.k.a. the Daes Report). Brown takes these documents to task, claiming, for instance, that the Daes Report “is more a grab-bag of laws, resolutions, and legal precedents than a closely reasoned policy statement” (p. 211). Further, he asserts that the Daes Report and other Total Heritage Protection work 1) assume that indigenous people are monocultural and ignore the fluid ethnic and kinship identities in indigenous communities; 2) neglect thorough analyses of the potential effects new regulatory policies

might have on the indigenous communities they are supposed to serve; 3) force “the exclusive qualities of entire civilizations” (p. 217); 4) impose “procedural norms that have the paradoxical effect of flattening cultural difference” (pp. 217–218); and 5) are likely to hinder rather than encourage “improved relations between native peoples and the nation-states in which they find themselves citizens” (p. 9).

Finally, in Chapter 8, “Finding Justice in the Global Commons,” Brown attempts to tease out the middle ground he hypothesized in Chapter 7 that moves more toward the respect and protection of “cultural integrity”—“an emerging code for respectful treatment of indigenous symbols, religious practices, and knowledge” (p. 234)—rather than rights to cultural or heritage property. He suggests that legislating rights often leads to legislating absolutes and one group’s rights prevailing over another’s, and thus legislating rights has the potential to undermine social justice initiatives. Instead, Brown is optimistic that culturally diverse citizenry can come together to complete the hard work of collectively hammering out compromises to codes of ethics and best-practices standards through diverse institutions of “civil society” (e.g., educational institutions, professional organizations, religious denominations, advocacy groups, labor unions, service organizations, writers and documentary filmmakers).

Although I appreciate Brown’s optimism toward the potential for local chapters of “civil society” to come together to promote social justice for indigenous peoples globally, I am skeptical that his idealized and under-theorized solution to this most recent positioning of an “Indian problem” will be realized without more specific and purposefully organized local and global responses. His optimism is based on one anecdote he includes in his last chapter that speaks to how an anonymous university archivist is involved in open dialogue with a local indigenous group concerned about the access and use of some archival records donated to the institution. Brown extrapolates that it was not NAGPRA that led to this dialogue (as archival documents of this nature are not covered under that legislation), but rather a “combination of professionalism—a commitment to serve the institution’s multiple publics as faithfully as possible—and simple decency” (p. 232). Although Brown admits that his critics may dismiss this analysis, he claims that his “interviews with cultural resource managers in the U.S. and Australia suggest that in fact this situation is more the rule than the exception today” (p. 233). This is problematic on several levels: 1) Brown’s book is supposed to be tending to the cultural knowledges of global indigenous populations, not just those in the U.S. and Australia; 2) many of the cases of indigenous intellectual property controversies discussed with his interviewees—both legislative and non-legislative—did not result in practices that benefitted the indigenous communities; 3) Brown does not discuss how this anecdote was resolved (are we to assume that open and civil communication between the archivists and the indigenous community is satisfactory progress toward respecting indigenous cultural integrity?); and, 4) even if the entirety of his interviews mirrored the aforementioned anecdote, collectively, they do not make for ample evidence to support that this is now the “rule” in “civil society.” Furthermore, those of us in indigenous studies and/or with indigenous ancestry may also question to what extent—given colonial history and rhetoric—we can trust that “civil society” will be that civilized toward indigenous peoples and “do the right thing” in negotiating effective and ethical cultural-protection policies for and with Native people. Moreover, Brown does not consider indigenous models when imagining his middle-ground solution. Does modeling the negotiation of improved cultural integrity policies not involve rhetorical listening to the audiences impacted by proposed solutions? When he speaks of ethical codes and best practices, then, to whose codes and practices is he referring? Whose measuring stick is he proposing that we use? But, then again, a middle ground can be located anywhere between parties, not necessarily equidistantly.

Brown also sometimes falls into colonial rhetorical trappings that diminish the overall success of his arguments. For example, in Chapter 5, Brown does not tend to issues of how colonization of indigenous lands affects how non-indigenous people understand ownership of land, particularly via the rhetoric of Western and “New World” expansion, private ownership through land grabs, mass genocide and government relocation of indigenous peoples, and more. Nor does he account for how colonialism influences the creation, revision, and contestation of origin stories and what counts as legal evidence of historical ties to a sacred site. Further, Brown’s rhetoric sometimes suggests that he does not understand—or at the least underestimates—the on-going legacy of colonialism and auto- (or self-) colonization. For example, in Chapter 7, Brown posits: “Happily, that era [linguistic and cultural imperialism that limits indigenous self-determination and rhetorical sovereignty] is coming to an end, if it is not already concluded” (p. 222). Related to this, Brown asserts the broad claim that “indigenous peoples themselves are now able to set the terms under which outsiders work in their communities” (p. 39). Finally, in his closing, he notes, “one happy effect of globalization is that civil society now has an international face” (p. 245).

On the other hand, the majority of his early chapters are careful to nod to colonization as something that has shaped indigenous and non-indigenous relations and the divergent ideologies that surround intellectual property discussions.

For instance, Brown takes great care in ferreting out the complexities in negotiating the distance between specific indigenous and non-indigenous worldviews and related ideologies regarding the proper circulation of cultural knowledge. In the last chapter, Brown even suggests that “Settler democracies must be held accountable for failure to honor their obligations to indigenous citizens” (p. 249)—in spite of the fact that this weakens his positioning of the global community as civil society and takes any teeth out of his plan for non-indigenous cogs within settler democracies to self-select themselves as participants in Brown’s social justice movement. Moreover, one of his case studies demonstrates how intellectual property and visual rhetoric travels in ways that can colonize and recolonize. For example, Brown demonstrates how the global circulation of Voth’s work has impacted subsequent non-Native representations of Hopi spirituality, such as “The Kachinas Sing of Doom” issue of the 1992 Marvel Comics series *NFL Superpro*, in which “saw-wielding thugs disguised as Hopi spirit-beings try to assassinate a Hopi figure skater” (p. 24).

Thus, as computers and writing scholars are increasingly interested in cultural contexts of meaning making, Brown introduces us to a variety of indigenous case studies that challenge our traditional notions of intellectual property and to stories that teach us about the determination of indigenous peoples working to protect their communities from continued appropriation and theft. Additionally, Brown’s discussions of heritage property, cultural appropriation, biopiracy, ethnocide/cultural genocide, epistemic hegemony, traditional ecological knowledge, cultural integrity, rights of cultural privacy, repatriation, and more, extend our rhetoric of intellectual property as well. Adding to discussions of remix and culture jamming, Brown offers us a vision of culture as an interweave: “shared, but differentiated, as segmented yet intrinsically free-flowing, as something that exists unto itself yet which is also defined by opposition” (p. 28), thereby flirting with contradictions between shared and private notions of culture. Finally, Brown also introduces us to important heritage protection legislation and initiatives related to indigenous intellectual property rights, including Australia’s 1989 Aboriginal Torres Strait Islander Heritage Protection Act, the U.S.’s National Historic Preservation Act of 1966, the American Indian Religious Freedom Act of 1978, the Native American Graves Protection and Repatriation Act of 1990, and the U.N. Declaration of the Rights of Indigenous Peoples, among others.

In addition to providing rich examples and discussions of intellectual property issues as they pertain to specific and diverse indigenous cultural groups, Brown also appeals to those new to discussions of intellectual property in general. For example, in Chapters 2 and 3, he provides a history of copyright and trademark in industrial societies, including a general introduction to copyright, trademarks, patents, trade secrets, public domain, fair use, and branding; to how technologies that copy have impacted our related understanding and controversies; and to relationships between property, control, and permanence, and the tensions between expression and suppression, as well as the author’s right to control and the public’s desire to readily access “new” and/or useful ideas.

Thus, Brown’s work is useful to those new to and those returning to discussions of intellectual property. In the end, Brown asserts that we should not be asking, “Who owns native culture?” so much as we should be asking, “How can we promote respectful treatment of native cultures and indigenous forms of expression within mass societies?” (p. 10). Brown’s work makes it clear that with determination and hard work, we may be able to negotiate progressive changes in intellectual property law and to craft policies that simultaneously respect cultural diversity and public domain concerns. Although his preferred solution of greater reliance on the moral values of civil society may read as too idealistic, the bulk of his text nonetheless supports thoughtful and ethical modifications of intellectual property laws and the development of workable cultural privacy and integrity policies that tend to local needs but also have the potential to inform and transform global societies.

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