

Who Owns Native Culture? MICHAEL F. BROWN.
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The struggle for civil and human rights continues to energize and confound us. What began as part of the breakdown of colonial structures echoes across the past half-century, with ongoing challenges to existing social structures and understandings about women, minorities, and indigenous peoples. Social change, accompanying successful objections to existing law and the drafting of protective legislation, did not arrive without the push and pull of challenges to individual and group behavior. In the U.S., the passage of the 1990 federal legislation, the Native American Graves Protection and Repatriation Act, (NAGPRA), was but one iteration of the movement worldwide to establish greater legal authority for minority and indigenous cultures. Similar legislation, for example, was established in Australia in 1993 that recognized aboriginal “ownership” over human remains, artifacts, and cultural objects deemed to have religious or other significant cultural meaning. Like NAGPRA, Australian legal recognition was followed by implementation policies to encourage repatriation of cultural property. In some countries the definition of protected cultural property extends to include traditional lands and geography. Legal definitions aside, the upsetting of long-held beliefs and practices in the world of collectors, museums, and educators has provoked and worried many people. Michael F. Brown’s book, *Who Owns Native Culture?*, provides a close reading of many of the inevitable conflicts, compromises, and contradictions that have arisen during this challenging period.

Each chapter provides a core case with multiple examples and similar stories. Endnotes extend the detailed discussion and provide clear examples of additional resources.

- Chapter one, “The Missionary’s Photographs,” examines the question of what can a tribe do when cultural knowledge has been taken by stealth or subterfuge, using the case of the Mennonite missionary, Henry Voth and his

photographs of Hopi people and rituals. How should contemporary society redress historic damage and safeguard what many indigenous people consider private or secret knowledge?

- Chapter two, “Copyright and Culture,” asks if there are limits to the control an individual and the indigenous group to which he belongs, has regarding the economic value and usage of a cultural design element. This chapter focuses particularly on the case of Australian aboriginal ownership and control of widely distributed visual images. Are the designs owned by the artist, by the clan/community, or some combination of the two? Is there a relationship between the cultural imagery claimed by an aboriginal group and their historic demand for land rights?
- Chapter three, “Sign Wars,” extends this issue of community group control over the appearance of an image by using the case of the Zia Pueblo and its assertion of ownership over a cultural symbol, the Zia sun, used in the state flag of New Mexico, and in numerous commercial representations. Is the conflict about economic interest or cultural respect?
- Chapter four, “Ethnobotany Blues,” examines the situation of indigenous groups struggling with the exploitation of their traditional lands and cultural knowledge, particularly knowledge they have or outsiders develop regarding the flora and fauna of traditional homelands. The concern for “bio-prospecting” extends even to the genetic makeup of the indigenous people themselves, and the patenting of life forms. How do indigenous people resist outside economic pressures and maintain a semblance of control while confronting all of the factors (economic, political, social, etc.) associated with capitalistic modernity? How do we address ethical questions in the light of current knowledge and multiple cultural norms?
- Chapter five, “Negotiating Respect,” looks at the issue of indigenous spiritual practice and the need of indigenous people for protected space and place. With the desire by many outsiders to use traditional lands or to gain access to religious or spiritual knowledge, what can be done to define and protect effective boundaries? While rejecting outright protectionism

through sovereignty, Brown asserts that one element lacking in the relationships between Western culture and indigenous peoples has been respect for and about indigenous spiritual activities and spaces.

- Chapter six, “At the Edge of the Indigenous,” extends the examination of protections for indigenous belief to the nature of these spiritual or religious practices themselves. Using Aboriginal rights cases that link people to land and cultural practice to issues of clan control, Brown extends the exploration of privacy begun in chapter one. What can be kept as a shared resource within a defined group but maintained as secret from all others?
- Chapter seven, “Native Heritage in the Iron Cage,” examines the piecemeal nature of the protections provided to indigenous cultures by various nations. Brown sees reason for concern that the drafting of mutual respect and consideration of the needs of indigenous peoples is leading to a kind of gilded cage with novel dangers and restrictions. Hybridization is seen as a non-negotiable, inevitable force for change and redefinition. Some legal “protections” are seen as having the potential for more harm than protection.
- Chapter eight, “Finding Justice in the Global Commons,” extends the examinations of the previous chapter and provides argumentation for the desirability of openness and a free ability to learn and express oneself in the context of today’s global culture. Brown asserts that a pragmatic approach that includes both open negotiation and mutual respect provides the best chance for accommodating both indigenous culture and emerging globalization.

Brown tackles explosive issues with care. Among indigenous people and the multitude of interested Westerners (among them are anthropologists, academics, museologists, and collectors), any discussion of ownership, intellectual and cultural property rights, and cultural sovereignty is likely to be a cause of considerable tension and conflict. Emotions run high on all sides. Into the fray, Michael Brown coolly describes specific problematic situations and proceeds to take a middle-of-the-road approach. At the conclusion of the book’s introduction, he reframes the title question:

... the crux of this problem does not lie in irreconcilable views of ownership, even where these exist. It is instead a fundamental matter of dignity. Reframed as a question, we should be asking not “Who owns native culture?” but “How can we promote respectful treatment of native cultures and indigenous forms of self-expression within mass societies? (2003:10).

Brown, a faculty member in anthropology and Latin American Studies at Williams College, argues passionately for a utilitarian path, in between those who would place rigid legal and moral boundaries around cultures and cultural practices, and those who would openly exploit anything and everything. Neither position is given much support. Indeed, Brown recognizes the complexity of individual situations and asserts that what is needed is a greater appreciation of the inherent ambiguities by all sides. What seems to happen all too often is that people get stuck in political and cultural rhetoric. What needs to happen, according to Brown, is adopting a strategy that provides explicit options for resolving differences, ensuring that the desire for cultural privacy by indigenous groups is respected while enabling negotiated settlements of the inevitable cultural conflicts. Where some scholars in intellectual and cultural property circles argue for greater legal protections, established through more restrictive and explicit legal structures, Brown tends to focus on what he argues are more pragmatic solutions. The legal protections come at a high price for both sides in the conflict but add little to the culture in the way of real safeguards.

In a prelude of sorts to the first chapter of this book, Brown’s 1998 article, “*Cultural Records in Question; Information and its Moral Dilemmas*,” describes conversations with several Hopi on the issue of NAGPRA and repatriation. Brown concludes with the following questions:

“Are some cultural records so morally contaminated that they should be closed to the general public? Does a culture own its traditions, or do they properly belong to the individuals who create and transmit them? In the interests of preserving indigenous societies, should free speech and freedom of information be curtailed by government edict? Finally, should we recognize an inherent right to “cultural privacy,” a concept mentioned in a recent conference calling for fundamental changes in the relationship between the Hopi tribe and outside researchers (Dialogue with the Hopi, 1995)?¹

These questions inform the logic and inquiry of *Who Owns Native Culture?* It also frames the major complaint that indigenous people will have about Brown's argument: he ignores a key demand of indigenous people for moving towards the equalization of power through cultural sovereignty. Indigenous people increasingly argue that relations between themselves and others must acknowledge the power of indigenous sovereignty over traditional land and cultural knowledge.

Brown is engaging and pragmatic in his coverage of cultural conflict. When describing the apparent concerns of some native people about the intrusiveness, even invasiveness, of some ethnographers in the recent past, Brown suggests that broad benefits or the burdensome costs of any restriction may outweigh the concern. Regarding Frances Densmore's prolific recordings of traditional Lakota songs in the early 20th century, for example, Brown quotes the popular Hunkpapa singer, Earl Bullhead, from his interview on National Public Radio where he describes these recordings as serving to preserve cultural knowledge and stimulate interest in the past. The positioning of the acquisitive ethnographer as the savior of declining minority cultures is a theme that appears often in the text. Even if true, this position presents a morally ambiguous scenario: a representative of a dominant culture, otherwise bent on eliminating the minority culture, serving a role as the preserver of that minority culture.

The difficulty of Brown's pragmatism is exemplified in his discussions of privacy, a concept woven throughout the text. He begins by noting that anthropologists define culture as being features shared by a particular group. By definition, Brown claims, this means that these features that make up a culture are public, contradicting any subsequent claim for privacy on the part of members of a cultural group. Anytime Western notions of privacy are applied to indigenous societies, it should not be surprising if contradictions arise. While Brown notes differences in defining privacy, the one he tends to privilege is that of Western anthropologists:

In the accounts of anthropologists, group privacy tends to come under the rubric of secrecy, especially secrecy about rituals. Theorists of liberal democracy are strongly inclined to treat secrecy as inherently corrosive, a practice that is rarely necessary and frequently abused. . . . Secrecy generates social hierarchy, distinctions between those who know and those who don't (1998:30).

Yet Brown recognizes the importance placed by indigenous groups on maintaining privacy, understanding that this importance increases with the desire of outside groups to gain access to valuable cultural knowledge. Brown clearly is uncomfortable with absolutes—a trait more common among field researchers where compromise and negotiation are more valuable than ideology.

In some of the included stories, such as those regarding the economic values associated with the buying and selling of native cultural goods, Brown's pragmatism is clear. In this arena, Brown envisions a democratic marketplace of ideas, assuming, to some extent, a level playing field that simply doesn't exist. The economic power of Western cultures stimulates imbalanced power, encouraging the exercise of privilege. Brown acknowledges this imbalance, noting how difficult it would be to recall the Densmore recordings, the Voth photographs of Hopi rituals, or to prohibit the use of Johnny Bulun Bulun's visual images, or the Zia Pueblo's sun symbol. Brown's perspective is echoed in the U.S. Patent and Trademark Office testimony of Mr. Peter Pino, tribal administrator and elder of the Zia Eagle Clan:

We do not want to stop the State of New Mexico from using the symbol. We want recognition of the taking, a formal apology, and some kind of gesture of remuneration to us—not that money can ever make up for this taking but because it is a wrong that needs to be righted. Many wrongs cannot ever be righted in western law but are atoned for, partially, by monetary payment. It is manipulative for others to criticize us for being materialistic to want some kind of symbolic payment for the unauthorized use of our symbol. If any symbol or object of religious significance is used with disrespect, there is an imbalance. We feel that the world today is out of balance.

Brown cites the crucial importance of biological knowledge held by indigenous cultures. He notes a key turning point in applying economic value to biological knowledge as being the 1980 *Diamond v. Chakrabarty*, U.S. Supreme Court decision. In this case, a bacterium, genetically-altered to be able to break down crude oil, was declared as patentable, with one of the justices declaring: "Anything under the sun that is made by man can be patented" (McLeod 2001: 157). With the support of this legal judgment, bio-prospectors rushed to find and patent items and materials associated with the biodiversity

of indigenous cultures and their traditional lands. Items under patent following this judgment have included drugs based on traditional medicines and human cell lines. To the new explorer—scientists accompanied by lawyers have replaced the soldiers accompanied by priests during the colonial invasions of the new world—indigenous cultures are viewed as locations of untold wealth, if only the right items are discovered for development. The principle of *terra nullius* was applied: these lands were empty of legal owners and whatever was found, even if in long use by indigenous people, was free for the taking. Dr. Vandana Shiva, an ecologist and physicist has described this development as bio-piracy, saying:

Patents are a replay of colonization as it took place 500 years ago in a number of ways. Interestingly, even at that time, when Columbus set sail and other adventurers like him, they also set out with pieces of paper that were called the letters patent which gave the power to the adventurers to claim as property the territory they found anywhere in the world. . . . (Paget-Clarke 1998).

The multitude of examples presented by Brown makes clear the changing power base of indigenous cultures. Many are exercising their prerogatives to challenge the legality of bio-prospectors; others are developing sophisticated profit-sharing relationships; while some indigenous groups are convening their own research projects and creating community-owned businesses to exploit their own cultural knowledge. Brown describes potential problems for the indigenous cultures who self-exploit. Among the hazards is that once the cultural group is able to isolate knowledge based on cultural ownership and then moves to exploit it economically, any demand for cultural secrecy, due to other considerations, is liable to be viewed with greater skepticism.

Who Owns Native Culture? provides a wealth of examples of the intersection of indigenous and non-indigenous interests. The book's strength is its insistence on examining the perspectives of many sides to the conflicts that inevitably arise and offering a model for reappraisals, negotiation, and resolution. The weakness of the argument is that its approach is grounded in pragmatic, political economics, leaving little or no room for the inclusion of indigenous insistence on cultural sovereignty. This approach is likely to mean that while negotiated settlements may be achieved, reconciliation is unlikely. Optimistic,

Brown writes: "So many people's rights are potentially in conflict that the best one can hope for is an imperfect, negotiated compromise based on common sense and some degree of mutual respect" (2003:167).

Notes

1. Brown, Michael
1998 "Cultural Records in Question: Information and Its Moral Dilemmas." CRM (Cultural Resource Management) 21(6), p. 20.
U. S. Department of Commerce, Patent and Trademark Office
1999 Regarding Issues Surrounding Trademark Protection for the Official Insignia of Federally- and/or State-Recognized Native American Tribes, July 8, p. 149.

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