

## CHAPTER ELEVEN

***“Do Not Do Unto Others...”: Cultural Misrecognition and the Harms of Appropriation in an Open-Source World<sup>1</sup>***

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Human societies have a long history of incorporating elements of the past into the present; never more has this been the case than today. For centuries, if not millennia, creative artists and writers, architects and fashion designers, publicists and advertisers have borrowed freely from the tangible and intangible heritage of other times and places (**Figure 1**). There is plentiful evidence of how fundamentally human achievement has depended upon the transmission of knowledge across cultures. The technologies that shape our world are a case in point. Consider just one example: concrete, a technology we think of as distinctively modern—literally the building block of 21<sup>st</sup>-century society—was developed by both the Egyptians and Romans thousands of years ago. In the context of increasingly rapid and global diffusion of tradition-specific images, ideas, and material culture, it is now often a default assumption that ancient objects and images are elements of a shared legacy of humanity.

In this spirit, a growing contingent of scholars and activists aggressively defend the free flow of ideas, images, and knowledge—within and between societies, ancient and modern—on grounds that this is essential to innovation and creativity. Proponents of the Open Access and A2K (Access to Knowledge) movements speak of the importance of sharing the world’s vast knowledge, while scholars such as Laurence Lessig, James Boyle, and Kembow McLeod (among others) point to the stifling effects of restrictions on open exchange. Frequently the advocates of open access draw attention to benefits that flow to the source communities and cultures (or their descendants), as well as to the recipients who draw inspiration from the cultural heritage of others. Even if economic benefits don’t flow equitably, so the argument goes, the open exchange of tradition-specific objects, practices, ideas, and knowledge may play an ambassadorial role, fostering cross-cultural understanding and respect.

At the same time, even the most enthusiastic advocates of open exchange recognize that those who create new products, new music, new literature have rights that deserve recognition and protection, whatever their source of inspiration. Certainly, in Western society, unauthorized use of original work is prohibited, or at least limited, by copyright, patents, trademarks, and similar conventions that allow the creators to obtain benefit for a specified length of time.<sup>2</sup> Despite the diversity of (conflicting) interests that figure in the contestation of these rights of ownership and fair use, there is shared understanding of what rights are at issue and broad recognition that they warrant protection; the challenge here is to find a balance between facilitating the flow of ideas and protecting the rights of creators.

A much different type of challenge comes into focus when we consider the question of who should have access to or benefit from the tangible and intangible heritage of Indigenous societies both past and present, where the values and interests at issue may be fundamentally different from those that find eloquent defense in the Open Access debates. In the Americas,

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<sup>2</sup> Efforts to protect these may clearly (and sometimes unnecessarily) hinder the development of new creative forms in music, art, and beyond (e.g., Aoki et al. 2008; Gaylor 2009; McCleod 2007).

Africa, Australia, and many other regions, the lives and material culture of Indigenous peoples have long been the object of widespread public fascination. Once disparaged as primitives on the lowest rung of the evolutionary ladder, these neo-Noble Savages have been a rich source of creative inspiration. Often emulated, commodified, and otherwise appropriated, their distinctive cultures have greatly enriched dominant societies in any number of senses, not just economically but intellectually, technologically, culturally, and spiritually (e.g., Deloria 1998; Meyer and Royer 2001; Owen 2008; Rose 1992).<sup>3</sup> And, as the libertarian advocates of a global commons argue, this has not only opened up new creative possibilities in the borrowing society—innovative art forms and cultural practices that could only flourish in a context of cultural exchange—but has also brought various benefits to the source communities (Young and Brunk 2009; Young and Haley 2008; others). Most tangibly, indigenous art production has become a crucial source of revenue in some contexts; we explore below examples drawn from the giftware industry in the Southwest (e.g., Bsumek 2008; Mullin 2001) and from the traditions of African sculpture and Australian Aboriginal painting that are now highly prized objects of international trade and connoisseurship (Comaroff and Comaroff 2009; Isaacs 1992). More intangibly, when objects created for utilitarian and/or spiritual purposes in their original cultural setting are today exhibited as art of the highest caliber, the processes of trade and exchange that bring them to international attention foster an intercultural appreciation of cultures that had all too often been presumed to lack any serious artistic accomplishment.

While acknowledging the benefits of cross-cultural exchange, it is important to recognize that they often come at a cost, and that this cost has largely been borne by Indigenous peoples who have had little power, historically, to determine what uses are made of their cultural and intellectual property, or to ensure that the benefits of exchange are reciprocal.<sup>4</sup> There are any number of cases in which elements of indigenous culture—art, music, technical knowledge, spiritual practices, medicinal and culinary traditions—have been appropriated in ways that members of these cultures regard as inappropriate or unwelcome, and that have caused harm of various kinds. Often enough, members of the appropriating culture have difficulty recognizing the harm they do; they may intend no harm or, indeed, they may operate with the best of intentions (e.g., Brown 2004; Johnson 1996; Nicholas and Bannister 2004). But the fact remains that whatever their goals and sensibilities, their actions sometimes threaten cultural values and identity, or undermine the economic interests, social relations and other core elements of the communities whose cultural heritage they admiringly appropriate.

In this chapter we explore two important questions that we believe should be central any discussion of the ethics and politics of cultural heritage: What are the harms associated with appropriation and commodification, specifically where the cultural heritage of Indigenous peoples is concerned? And how can these harms best be avoided? Archaeological concerns animate this discussion; we are ultimately concerned with fostering postcolonial archaeological practices. But we situate these questions in a broader context, addressing them as they arise in connection with the appropriation of Indigenous cultural heritage, both past and present.

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<sup>3</sup> There are, of course, many examples of cross-cultural borrowing in which dominant cultures have been significantly shaped and, indeed, transformed by the traditions of those they have invaded, ruled, colonized, settled, or traded with. This is well documented in the Old World where, for example, Egyptian culture influenced Greek culture, which in turn influenced Roman society, and where the Roman Empire took shape through a complex dynamic of exchange with subjugated indigenous cultures.

<sup>4</sup> Indeed, our chapter is weighted towards the effects of appropriation on Indigenous peoples for this reason.

We begin by sketching a spectrum of harms, ranging from manifestly and sometimes deliberately harmful types of appropriation – cases of theft and dispossession, recognized as such by members of the appropriating culture – through to types of cultural exchange, emulation and celebration of Indigenous cultures that are typically not seen as pernicious forms of appropriation but may nonetheless cause harms of more subtle and inadvertent kinds. We then consider four cases that illustrate in concrete terms the interplay of harms and benefits, and that bring into view a variety of responses to cultural appropriation, ranging from acceptance to protest. Our purpose is to identify (some of) the economic, social, cultural and spiritual costs of cultural appropriation in cases where one dimension of the problem is that the interests and sensibilities of members of the source community are systematically misrecognized by those who appropriate elements of their cultural heritage. In developing this analysis we presuppose that there may be fundamental differences between the world view, legal regimes, and cultural norms that underpin Indigenous conceptions of heritage, and those characteristic of the dominant (EuroAmerican-derived) Northern and Western societies that have displaced and colonized them. In particular, many Indigenous and non-Western societies do not recognize the distinctions between tangible and intangible heritage presupposed by much (Western) legal and philosophical discussion of cultural appropriation. The material elements of heritage, such as artifacts, archaeological sites, or places, cannot be separated from the knowledge, beliefs, and stories associated with them; ancestral beings and supernatural forces may be understood to reside in material things and places, not only in the past but *still* today. In these cases a lot more than economic value, or historical and archaeological significance is at stake for Indigenous peoples when heritage sites are threatened or when traditional objects, images, and knowledge are used in inappropriate and unwelcome ways. The challenge is not just to balance competing claims, but to understand claims predicated on conceptions of value and harm that may diverge quite fundamentally.

In our concluding section, we turn to the question of how such harms can be avoided or mitigated. We focus, in particular, on one approach—community-based participatory research (CBPR)—that creates a context in which source communities can identify and convey their appreciation of the harms associated with the appropriation of their cultural heritage, and a process that may enable researchers to engage in more ethical and responsible practices in relation to these communities.

### **“Do Not Do Unto Others...”: Kinds and Degrees of Harm**

In a general sense, “appropriation” may be defined simply as the use and retention of something without permission. We use the term in this generic sense; the questions of whether a particular instance of use is appropriative, and whether (or to what degree) it is harmful or beneficial, must be adjudicated on a case-by-case basis with attention to the contexts and history of cultural exchange within which it occurs. Central to this conception of appropriation is the insight that it involves intentional decontextualization (Meurer and Coombe 2009: 21). In some cases, the repurposed use of images and ideas has morphed into familiar tropes within the literary and artistic traditions or cultural discourse of the recipient society; what was once appropriated has been recontextualized. A particular instance of appropriation becomes problematic when “a cultural text is *improperly* recontextualized, to the outrage or injury of those who have serious attachments to its repositioning in specific worlds of social meaning” (Meurer and Coombe 2009: 21: emphasis in original). Recognizing that what counts as injury and what occasions outrage may vary widely is vital to characterizing the harms that can be done by appropriation, especially when cultural heritage is central to a person’s (or a society’s) well being.<sup>5</sup> There is a

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<sup>5</sup> Here we invert the questions that frame James Young’s (2005, 2010) philosophical argument that, while some appropriations may be harmful or “profoundly offensive,” they are not inherently wrong, particularly

variety of ways in which elements of cultural heritage may be (and have been) appropriated – by purchase or trade, through discovery (accidental or otherwise) and indirect influence, as well as through forcible alienation – all of which may prove enriching for one or both parties, but which may also cause harm depending on history and context.

The starkest and, in a sense, the most straightforward cases of harm are examples of theft or forcible appropriation that are acknowledged as harmful by the appropriating community or, indeed, may be deliberately intended to harm. For example, in the 19<sup>th</sup> century, the British Army led retributive raids in both Benin and Ethiopia, capturing large collections of antiquities and other items of cultural significance (Waxman 2008; Young 2010: 19-21). In the early 20<sup>th</sup> century, ceremonial regalia and masks of Northwest Coast tribes were confiscated by the Canadian government in an effort to prohibit the potlatch<sup>6</sup>; these items of cultural patrimony subsequently became the foundation for a number of major museum collections (Cole and Chaikin 1990; Simpson 2001). Such instances are, sadly, not uncommon in the history of the colonial enterprise worldwide. Adding insult to injury, the harm done by the forcible removal of highly prized antiquities was often compounded by colonial programs of archaeological research that purported to demonstrate that the ancestors of local populations could not possibly have produced such cultural treasures (e.g., Zimbabwe in southern Africa; the mounds and earthworks of eastern North America). Indigenous source cultures were thus stripped of tangible cultural heritage in a way that both reinforced entrenched prejudices about their cultural sophistication or technological capacity, and provided a retrospective justification for appropriation.

A short step from outright theft or wartime appropriation are the various strategies, now well documented by Indigenous scholars, by which the members of dominant cultures have subverted or manipulated their own legal and political conventions to justify acts of appropriation that would otherwise have been clearly judged unjust and/or illegal. Consider, for example, Laurie Anne Whitt's (1998) classic assessment of the ways in which fictions of absence have been used to legitimate legal manipulations by which Indigenous peoples have been dispossessed of their land, and then their material culture, intellectual property, and now medical/bio-genetic resources (also 1999). Whitt argues that appropriation turns on two reinforcing claims, especially clearly articulated in connection with territorial rights<sup>7</sup>: first, a

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where creative artistic production is concerned. We share Young's appreciation that a categorical condemnation of cultural appropriation cannot be sustained but, where the focus of his analysis is on defending cultural appropriation (in the spirit of those mentioned earlier who defend open access), we are concerned to explore the range of harms and offense, the burdens imposed by appropriative practices, of which those engaged in appropriation should be mindful.

<sup>6</sup> In 1885, the Canadian government revised the Indian Act to ban the potlatch (Canada 1885); the so-called "potlatch law" was rescinded only in 1951: "Every Indian or other person who engages in or assists in celebrating the Indian festival known as the "Potlatch" or the Indian dance known as the "Tamanawas" is guilty of a misdemeanor, and shall be liable to imprisonment for a term not more than six nor less than two months in a jail or other place of confinement; and, any Indian or other person who encourages, either directly or indirectly an Indian or Indians to get up such a festival or dance, or to celebrate the same, or who shall assist in the celebration of same is guilty of a like offence, and shall be liable to the same punishment." The Sundance was also made illegal in 1895 by another amendment to the act (Canada 1895), also rescinded in 1951.

<sup>7</sup> We thank one referee for noting that the legal doctrine of *terra nullius* was not extensively used in North America; as Banner (2007) argues, the process was a complex one that turns on the imposition of a legal framework that legitimated land ownership and land transfer on terms set by European Americans. For purposes of this argument we take Whitt to be outlining a strategy of justification (moral and political) that

declaration that the land Europeans encountered in the Americas, Australia, and elsewhere was unoccupied—that it was *terra nullius*—usually accomplished by fiat of European definitions of what counts as occupation and/or by forcible displacement of Aboriginal peoples; and second, a conversion of this definitionally public property into private or individual property. She makes the point that “the politics of property has never been confined to land” and considers how the same strategies structure conflicts over the ownership of indigenous music and, “genetic wealth and pharmaceutical knowledge,” and, indeed, the archaeological debates about repatriation. These are replete with examples in which the age of items, uncertainty about their attribution to living cultural traditions or their affiliation with specific descendant communities are used to establish the claim that valued elements of these traditions – everything from spiritual traditions, rock art designs and artifact styles, to technical knowledge and human remains – can be treated as “public domain” (Nicholas forthcoming), available for the taking to anyone enterprising enough to make use of them.

A different scenario arises when, in retrospect, the ostensibly legal purchase or trade of heritage items proves to be problematic: the conditions of sale were coercive; the seller did not have a right to alienate the items either because s/he did not own them, or they were items of group patrimony and there was no consensus empowering the sale or consensus changed. One of the best-known examples of this was the removal of major architectural elements of Parthenon in 1802 by Thomas Bruce, the 7<sup>th</sup> Earl of Elgin. While it appears that Bruce greatly overstepped the intent of the permit he obtained from the Ottoman sultan to “remove some pieces with inscriptions or figures” (Browning 2008: 11), and his actions were contested at the time in Britain (in parliamentary committee hearings) as well as by the local Athenian population, the so-called “Elgin Marbles” have been a centerpiece of the British Museum for almost 200 years. The official stance of both the museum and the British government continues to be that these marbles were legally obtained.<sup>8</sup> Comparable issues arise in connection with the purchase from Indigenous peoples of the rich inventories of masks, regalia, carvings, and other secular and sacred items still housed in museums in Australia, Canada, the United States, and elsewhere (e.g., Coles 1985).<sup>9</sup> In recent decades, following the success of several high-profile repatriation cases, many museums are increasingly responsive to repatriation claims and explore options for sharing ownership, developing collaborative programs of exhibition.

Issues relating to the appropriation and repatriation of Southwestern ethnographic materials are particularly interesting and enlightening in this context, ranging from the issues surrounding the Ahayu:da (war god) carved by ethnographer Frank Cushing, who was an initiated member of the Zuni Priesthood of the Bow (Isaac 2011: 218), to the information collected by Elsie Crews Parsons at Laguna Pueblo later “fictionalized” by Leslie Marmon Silko, herself Laguna (Nelson 2001), to concerns over the use of photographs of Zia Pueblo, to concerns about the use of photographs in museums and other contexts (e.g., Holman 1996). Gwyneira Isaac’s (2011) recent examination of Zuni principles relating to the intangible aspects of cultural patrimony and the reproduction of the knowledge contained therein is essential reading here. Notable is William Merrill’s statement (cited in Isaac (2011: 219) regarding the authenticity of “replicas,” such as Cushing’s: “From the Zuni perspective the fact that Cushing might have produced the

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figures in a number of contexts of appropriation, the logic of which is made explicit by the legal doctrine of *terra nullius*.

<sup>8</sup> However, as Hitchen’s (2008) notes, there were several occasions when the marbles were almost returned. See Young’s discussion of this case, and his critique of the standard “rescue argument” defenses for their retention (2010: 72, 103).

<sup>9</sup> Questions of ownership may be complicated by issues of private vs. communal property, as well as by the fact that ownership of some items sold willingly in the 19<sup>th</sup> and 20<sup>th</sup> century is today challenged.

Ahayu:da is irrelevant to its authenticity. Their position is that anything produced on the basis of Zuni knowledge (and especially Zuni religious knowledge) ultimately belongs to the people of Zuni, even if produced by non-Indians; for them there is no such thing as a “replica” or model.”

Beyond these are cases where appropriation seems uncontroversially legal in the terms set by dominant Western legal conventions, but harm of various kinds is done to the source communities nonetheless. There are numerous cases in which medical and genetic researchers have obtained permission from Indigenous peoples to record traditional knowledge and collect biological samples but have exceeded the bounds of the original study and agreements associated with it. Well-publicized examples include the Nuu-chal-nuth blood study in British Columbia (Cybulski 2001), and the case of the Haghai of Papua New Guinea in which researchers sought patents on cell lines (WIPO 2006).<sup>10</sup> Even when there are legal mechanisms, like copyright or patents, that Indigenous communities could use to protect elements of their traditional heritage that have value in the dominant culture, until recently Indigenous communities have made little use of them. This should not be surprising; the nuances of intellectual property law are daunting even for those who are familiar it,<sup>11</sup> but often enough Indigenous communities do not share the conceptions of property or commoditized value that underpin this legal regime.<sup>12</sup> Their music or art or, indeed, land and bio-genetic profile, never seemed the kind of thing that should require legal protection.<sup>13</sup>

Increasingly, Indigenous peoples *are* interested in the information that can be derived from the genetic analysis of ancestral remains and modern samples, and from archaeological studies of heritage sites and artifacts (e.g. Nicholas et al. 2008), to take just two examples. But they want to be involved in decisions about what will be studied, how research will be conducted, and how the resulting information will be used. One of the central challenges they face is that historically they have lacked the means to ensure that they will benefit from the use of their heritage by others; they do not have the means to institute the necessary legal protections, and may not be in a position to realize the benefits of such protection. A case in point from British Columbia concerns ethnobotanist Kelly Bannister and her doctoral research (2000) on the role of plants in traditional medicine, and the biochemical and pharmacological properties of balsamroot (*Balsamorhiza sagittata*). To protect the traditional knowledge of the Secwepemc Nation with whom she was working, Bannister co-developed a protocol with the Skeetchestn Indian Band that governed her work. Because of the potential economic interests in the commercial applications of her research results, she subsequently obtained from her university a restriction on public access to portions of her dissertation; this was designed to ensure that the Secwepemc Nation would have the opportunity to pursue biomedical or other applications of

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<sup>10</sup> In these and other similar cases, such as the controversy surrounding James Neel’s research on the Yanomami (see Tierney 2000; also Kaestle and Horsburgh 2002), harm was clearly done to the communities involved. The reputations of those conducting the studies have been widely questioned, although often long after the event, but lingering concerns about the need to protect the interests of Indigenous peoples ultimately brought an end to the Human Genome Diversity Project (see Reardon 2005; also Hollowell and Nicholas 2009; Marks 2010).

<sup>11</sup> Protection of biological materials is sometimes based on complex legal principles, with sometimes surprising results. A famous case in which what would seem to be protected property is not is that of John Moore, who unsuccessfully claimed an ownership interest in a patent related to a cell line derived from his spleen (Boyle 1996).

<sup>12</sup> Several years ago, one of us (GN) was told by a very upset First Nations man from Alberta that “someone videotaped our Sundance and copyrighted it,” expressing great concern that the intellectual property of his people had been appropriated. This illustrates how incomplete or incorrect lay knowledge of intellectual property law may be, but also that even the perception of appropriation can cause harm.

these results, if they so desired. Although this afforded some protection from bioprospecting – this is a case in which the Indigenous community could establish a right to control and profit from their traditional knowledge in terms that have legal standing in the dominant community – the time and resources required to develop viable products was far beyond their means.

By contrast, there are cases where the heritage in question is not recognized within the dominant culture (or legal system) as a type of property could be legally protected<sup>14</sup> or, more prosaically, its significance for the source community presupposes values and concepts that have no cultural salience or legal standing in the dominant, appropriating community. Especially troubling are cases in which harm is done, even by those who operate from the best of intentions — for example, artists who admirably emulate Indigenous design traditions; collectors who are deeply appreciative of Indigenous material culture; archaeologists who painstakingly investigate sites and artifacts with the aim of understanding Indigenous cultural traditions — because they lack the understanding necessary to know what it is they're appropriating, and what the impact is of their appropriation. These include examples of harm done by appropriation that is meant to honor Indigenous peoples (see Aldred 2000; Brown 2004; Meyer and Royer 2001; Nicholas and Bannister 2004). Clearly specifying and communicating what is at stake across these kinds of cultural divide becomes especially challenging when Indigenous peoples are themselves divided on questions of appropriate use. To draw an example from the American Southwest, a central element of traditional Navajo healing ceremonies is the practice of creating elaborate paintings of Holy People and other supernatural entities using colored sand on the ground. These sand paintings become “impermanent alters where ritual activities can take place,” but, most important, they are also full of power and, for this reason, they are erased after the healing ceremony is concluded (Parezo 1983: 1). This practice continues today, but alongside other far more secular uses of sand paintings, which include the creation of permanent versions for sale to tourists:

Although some Navajos were upset at first when individuals violated religious taboos by making sandpaintings in a permanent form outside their ceremonial context, the Navajo community was never totally united against their production. By the late 1970s many Navajos recognized the existence of both sacred and secular sandpaintings. But the road to acceptance of this dichotomy had many twists and turns. From the first, reaction ranged from indifference to violent opposition. Reasons for the opposition varied widely. Some felt that a sacrilege was being committed and the paintings were being treated irreverently; some feared supernatural repercussions, for to break a rule is to disrupt harmonious relationships with the deity which would probably, but not necessarily, cause trouble. Others did not fear for themselves but objected because the uninitiated could see the paintings or view them in the wrong season. Still others feared for the Anglo recorders who were unprotected but in continue contact with concentrated power (Parezo 1983: 63).

Finally, even when Indigenous peoples freely share aspects of their culture with others, recipients may be unwilling to accept that these gifts come with important limitations (Irwin 2000; Owen 2008). Admiring outsiders who draw inspiration from Indigenous spiritual traditions may not realize the harm they do when enacting, or representing these traditions, and may be surprised and offended when objections are raised. For example:

At a 1986 benefit concert staged to raise funds to support the efforts of traditional Navajos resisting forcible relocation from their homes around Big Mountain, Arizona, one non-Indian performer took the opportunity between each of her songs to “explain” one or another

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<sup>14</sup> This point is central to Banner (2007).

element of “Navajo religion” to the audience. Her presumption in this regard deeply offended several Navajos in attendance and, during an intermission, she was quietly told to refrain from any further commentary. She thereupon returned to the stage and announced that her performance was over and that she was withdrawing her support to the Big Mountain struggle because the people of that area were “oppressing” her through denial of her “right” to serve as a self-appointed spokesperson for their spirituality. “I have,” she said, “just as much right to spiritual freedom as they do” (Churchill 1998: 103).

In short, when considered from the perspective of the source culture, significant harm may be done by cultural appropriation even when no harm is intended or recognized within the dominant culture. This brings home the prosaic wisdom that the Golden Rule, in its conventional form,<sup>15</sup> is not necessarily a good guide to action in contexts of cultural exchange or appropriation. Given the cultural differences that may be involved, especially where the relationship between tangible and intangible property is concerned, it is dangerous to assume that your sensibilities about what constitutes respect and appropriate use will be a reliable guide to whether or not a given instance of cultural appropriation is harmless. It is especially dangerous to ignore the possibility that what you regard as an innocuous, acceptable, or even laudable use of elements drawn from another’s cultural tradition, may, in fact, be profoundly offensive, may undermine economic well being and social relations tangible ways, or threaten identity and cultural integrity. It is crucial, then, to consider the significance of objects of appropriation within the context of their source traditions which, in turn, requires a commitment to respectfully learn about Indigenous worldviews, customary laws, and values.

#### **A Consideration of Four Cases: When Appropriation Harms and When It Does Not**

As the spectrum of harm outlined in the previous section makes clear, cultural appropriation is by no means a unified phenomenon, and neither are its benefits or its harms.<sup>16</sup> Indeed, because not all uses of heritage (without permission) constitute appropriation in a negative sense, it is important to explore examples that illustrate the complicated interplay of good intentions and inadvertent harm. The cases presented in this section further illustrate why we need to move beyond appeals to good intentions and the constraints of legality in assessing the harms and benefits of cultural appropriation; the first set of examples are ones in which inappropriate or unwelcome uses of cultural heritage cause various kinds of harm, and the second set draw attention to cases that seem to be appropriative in a negative sense but, on closer examination may not be. They are chosen to illustrate common themes that arise in contexts ranging from entertainment to economics, and from cultural tourism to ancestor celebration, and to suggest strategies by which we might more effectively recognize and constructively respond to harms that are not necessarily salient in our home culture.

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<sup>15</sup> Standard formulations are both prescriptive and proscriptive: “do unto others as you would have them do unto you,” and “do not do unto others what you would not have done to you.”

<sup>16</sup> This point is central to Young’s (2010) analysis of the ethics of cultural appropriation in the arts, and is evident in the diversity of viewpoints represented in Young and Brunk’s edited volume, *The Ethics of Cultural Appropriation* (2009). See also Brown (2004); Nicholas and Bannister (2004a, b); Nicholas and Hollowell; and others.



## When Appropriations Harm

### *A) Wanjina-Wunggurr Rock Art*

One of the most widely appropriated aspects of cultural heritage is rock art, which not only garners attention from both academics and the public for the insights it provides into ancient and/or exotic worldviews, but also serves as a source of images for a variety of commercial products, from t-shirts and mugs to high-end designer clothing and art. However, the inappropriate use of these images has had a direct and negative impact on these indigenous communities precisely because the tangible image cannot be separated from its intangible associations. Not only do they represent clan property, they may quite literally embody ancestral spirits, and in this they are not “of the past” but have a timeless significance; they are a vital part of a living cultural tradition, constitutive of the identity and spirituality of these communities.

This is the case in Australia, for example, where rock art has been widely commercialized and has also been prominent in cultural tourism. Customary law has long served as the means to limit access to (indeed viewing of) various images, thus ensuring their protection, but this is challenged by outside interests. As Janke and Quiggin note, “Within Indigenous Australian groups, there are consistent principles underlying the ownership, cultural integrity and consent procedures. However, the Australian legal framework limits the ability of Indigenous people to adequately protect their [Indigenous cultural and intellectual property] from exploitation by outsiders” (2005: 8).<sup>17</sup>

In the rock-art rich Kimberley region of northern Australia, the Wanjina-Wunggurr people find themselves challenged by the rapidly expanding cultural tourism industry. Here, their concern is for the wellbeing of famous “wanjina” pictographs, which they consider animate; the paintings are the embodiment of the creator beings who formed the land, the laws, and customs of these people. These images continue to be “freshened up” by repainting to keep the world right. As Graber (2009: 18) observes:

The rapid expansion of tourism in this region is considered to be a new threat to the sacred rock art sites. Many tourists travel to the area expecting to see the Wanginas as promised in the advertisements. The Wanjina-Wunggurr people, however, fear that unauthorised visits may offend the Wanjinas [ancestral beings] and that tourists will vandalize the sacred sites. The Wanjina-Wunggurr people are thus interested in legal remedies that prevent the Wanjina from being visited and reproduced, and sacred rituals from being disturbed by people who have not received their prior consent. Consequently, during the [native title application] proceedings, the applicants put forward a claim for a right to prevent inappropriate viewing, hearing or reproduction of secret ceremonies, artwork, song cycles and sacred narratives.

The significance of these concerns is illustrated by an incident that occurred in a session on intellectual property that one of us (GN) co-organized at 2008 World Archaeological Congress conference in Dublin. One of the participants gave a presentation on her research on rock art in the Kimberley region that included photographs of the sites and images she was describing. In the question period an Aboriginal man from that region who was in the audience strenuously objected that this violated fundamental cultural guidelines of access: “How dare you show these images! I could be killed by my community for having seen these!” Although Indigenous

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<sup>17</sup> See Anderson (2005); Coleman (2005); (Janke (2003), and Johnson (1996) for discussions of the types of impacts, and over prominent legal cases to restrict unauthorized use of rock art images, including the Deaf Adder and Bulun-Bulun cases.

peoples may welcome scholarship that recognizes the richness of their cultural traditions and are involved with or themselves undertake to develop cultural tourism for a variety of reasons, including economic benefit (see Mortensen and Nicholas 2010), the Wangina-Wungurr example makes it clear that, some aspects of their cultural heritage may need to remain off-limits to avoid harm to themselves, to visitors, and to ancestral beings.

### B) *The 2010 Winter Olympics*

The Vancouver Organizing Committee (VANOC) of the 2010 Winter Olympics ostensibly went to great lengths to include Canadian First Nations in various events, including the opening ceremonies. Their participation was seen as a vital element in presenting and promoting Canadian heritage, and many First Nations individuals and groups also saw this as a celebration of their culture; the Four Host First Nations<sup>18</sup>—Lil'wat, Musqueam, Squamish and Tsleil-Waututh—were an Official Partner of VANOC and had, at least nominally, a role in decision making involving Aboriginal issues. At the same time, the games were marked by protest and controversy by other First Nations groups and persons who objected to the games as a whole or to what they saw as an exploitative use of First Nations presence to showcase the games, with little or no meaningful participation in decision making (e.g., O'Bonawain 2006). Three examples of how indigenous heritage was incorporated into the games makes it clear that while there were economic and other benefits to First Nations, but that these were accompanied by various harms.

*Inuksuit* (singular – *inukshuk*) are the standing stone arrangements, sometimes anthropomorphic in form, found across the arctic landscape that have been created by Inuit hunters likely for millennia. A stylized version of an *inukshuk* was adopted by VANOC as the logo for the 2010 winter games, with permission granted from Nunavut Premier Paul Okalik. However, not all Inuit were in agreement. As a result of the use of the widespread use of the image, particularly on thousands of Olympics-related products, the *inukshuk* have lost much of their cultural specialness and also now become both common and emblematic of Canada and the Vancouver Olympics in the public imagination, rather than of Inuit culture. The stylized Olympics image has also, as noted by Solen Roth, “contributed to crystallizing one particular kind of rock formation as the archetypical *inukshuk*.” Finally, the choice of the symbol was puzzling to many as it had nothing to do with British Columbian First Nations: as noted by O'Bonsawin 2006: 389), “Squamish hereditary chief Gerald Johnston publicly condemned the [International Olympic's Committee's] selection of the inukshuk logo by declaring that its choice was in bad faith, a deliberate act of assault on Northwest Coast sovereignty, and the symbol of a foreign indigenous nation.” These examples reveal that a variety of harms may occur when a cultural item becomes a popular icon, as well as concerns over the production of, and benefits from, the giftware. At the same time, many Inuit felt pride in the recognition of their heritage, especially the arts and crafts. In addition, some carvers and communities benefited directly from the manufacture and sale of handmade *inukshuk* through an agreement made between the Nunavut Development Corporation and VANOC (CBC News 2010).

Another cultural controversy erupted during the Olympics when the Russian figure skating team performed their routine wearing costumes based on traditional Aboriginal Australian body painting and faux didgeridoo music. Bev Manton, New South Wales Land Council, stated “I am offended by the performance and so are our other councilors.” Seeming bewildered by this hostile response, Maxim Shabalin, one of the Russian skaters, defended this appropriation of

<sup>18</sup> See VANOC's press release on this: <http://fourhostfirstnations.com/a-historic-protocol-for-the-four-host-first-nations-and-vanoc>. For a critical review of this initiative, written in advance of the event, see O'Bonawain 2006.

Aboriginal heritage with the statement: “We researched a lot of information on the Internet.”<sup>19</sup> The suggestion seems to be both that they intended no disrespect and that what they appropriated was nonproprietary – available in the most public of public domain contexts. Beyond controversy about what is or is not public domain, and what constitutes fair use of publically accessible information, what Manton points out is that, from the point of the source community, this was clearly an instance of appropriation in the negative sense: it involved use without permission in which elements were taken out of context and inappropriately reconcontextualized. It was, moreover, an instance of harmful appropriation, threatening the integrity of Aboriginal culture by transforming it into a form of popular entertainment.

One final example is the marketing of First Nations culture at the Olympic Games and issues of economic harm. In one case, a lucrative contract was awarded to a leading department store to produce sweaters initially described as “Cowichan-like,” in relation to the regionally distinctive style of the Cowichan people; these sweaters were to be worn by the Canadian Olympic team and also sold to the public. This decision was a stunning upset for the Cowichan First Nation who have long produced these sweaters and had submitted a bid that was lower than that of the department store. This immediately elicited the threat that the Cowichan First Nation and their supporters would stage high profile protests in the lead-up to the Games.<sup>20</sup> In the end, a settlement was negotiated that provided the Cowichan First Nation a contract to sell their sweaters in the department store, alongside the official Olympic ones, by then described as “Canada’s answer to the Nordic sweater”. This was, however, just one of a number of cases that mobilized protests from the First Nations about the practice of outsourcing the production of “Authentic Aboriginal Products” endorsed by VANOC (the Vancouver Organizing Committee for the Olympic and Paralympic Winter Games). In response, a group of First Nations artists and artisans created their own authenticating mark to identify their creations (Brown and Nicholas 2010).<sup>21</sup>

#### When Appropriation Does Not Harm

Although, as the previous examples make clear, the use of another’s culture without permission and in inappropriate ways may be profoundly harmful, not all cultural borrowings constitute appropriation in this negative sense. As we acknowledged at the outset, cultural sharing and exchange may be enormously enriching; insights drawn from lives lived in different ways, at other time and in other places, are a rich source of inspiration on any number of dimensions. In the cases that follow, we consider how one society has benefited from unattributed archaeological heritage, and how the commodification archaeological heritage in another honors its ancestors.

#### *C) Mata Ortiz Pottery*

The appropriation of various elements of Puebloan and other indigenous heritage the southwestern United States has been an established practice from the time of contact, for several hundred years. Images or representations of *katchinas*, wooded figurines that represent supernatural beings, and of *kokopelli*, the flute player, now adorn mailboxes, jewelry, clothing,

<sup>19</sup> See: [http://sports.yahoo.com/olympics/vancouver/blog/fourth\\_place\\_medal/post/Aboriginal-leaders-Russian-ice-dancers-routine?urn=oly-221290](http://sports.yahoo.com/olympics/vancouver/blog/fourth_place_medal/post/Aboriginal-leaders-Russian-ice-dancers-routine?urn=oly-221290)

<sup>20</sup> Numerous newspaper articles are available documenting both the reaction of First Nations communities (e.g., <http://www.cbc.ca/canada/british-columbia/story/2009/10/07/bc-olympic-cowichan-sweater.html>) and the resolution of the sweater controversy (e.g., <http://www.cbc.ca/canada/british-columbia/story/2009/10/28/bc-cowichan-tribes-olympic-sweater.html>)

<sup>21</sup> See Damian Inwood (2009): “Native businessman upset at VANOC’s outsourcing of aboriginal products; local merchant claims ‘authentic native art’ is being made in China.”

and other products.<sup>22</sup> At the very least, the popularity of indigenous motifs coupled with the cheaper prices for replicas, continues to foreground issues of authenticity and economic loss.

But by contrast to the appropriation of the sun symbol from the pottery from Zia Pueblo,<sup>23</sup> the example of Mata Ortiz is a case in which an ancient pottery style has inspired a new artistic movement that benefits indigenous peoples economically and culturally. In the mid-1950s, a young man from Nuevos Casas Grandes in Chihuahua, Mexico, was inspired by pottery sherds from the archaeological site of Casas Grandes (Townsend 2005). Juan Quezada taught himself to produce pottery inspired by this ancient ceramic tradition. What resulted was a new, community-wide pottery movement that has gained international attention.<sup>24</sup> Mata Ortiz and the ceramic artists he inspired set out to create an innovative, consistent visual language that was distinct from that of their predecessors or contemporaries and while incorporating some similar, recognizably Southwestern decorative and symbolic elements. The resulting ceramic style (**Figure 2**) reflects a conscious effort at self-determination, articulating the identity of a new polity but in visual terms that would be accessible to and understandable throughout the region; those working in this style are now moving beyond traditional forms to experiment with new pottery designs and other media. In this case there are no Southwestern groups who make specific claim to Casas Grandes, apart from the recognition that it falls within the general culture region (Maccallum 1978); it is an instance of inspiration in which Indigenous peoples derived direct benefit, initially creating beautiful and highly desirable replicas of ceramic designs associated with earlier (and likely unrelated), and then expanding in new artistic directions.

#### *D) Tollund Man*

One of the most haunting images found in archaeological publications is of the Tollund Man, a 2,000-year-old individual whose body was extraordinarily well preserved in a wetland environment. Photographs of this individual are widely available in archaeological publications and other sources, including being featured in a British comedy series “Blunder.” In an earlier publication, one of us (GN) had suggested that descendants might be offended by the use of his image in advertising, such as for “Moor Mud” facial cleanser<sup>25</sup> and other products. This concern reflected experience with Indigenous peoples and the concerns they and others raise about cultural sensitivity regarding human remains,<sup>26</sup> but it proved to be unfounded in the case of the Tollund Man.

Recent conversations and correspondence with Danish colleagues, Ulla Odegaard and Mille Gabriel, shed important light on the broader context in which these uses of the image of Tollund Man take place. In response to a query about this case, Odegaard of the Danish National Museum wrote that,

...the Danish people are proud of the Tollund man. Novels have been written about this peacefully looking person, who died a (probably) ritual death in the moor. I asked Mille Gabriel [curator at the Ethnographic Department, who recently finished a Ph.D.

<sup>22</sup> Zena Pearlstone (2000) and others have examined issues of commodification associated with these forms of commercialization.

<sup>23</sup> Zia Pueblo launched legal challenges to the State of New Mexico and Southwest Airlines over their use of the image (see Nicholas and Bannister 2004).

<sup>24</sup> The economics of Mata Ortiz pottery, and its competition, are discussed by Medina (2008).

<sup>25</sup> [http://www.torfspa.com/about\\_moor.html](http://www.torfspa.com/about_moor.html)

<sup>26</sup> See, for example, the Tamaki Makau-rau Accord on the Display of Human Remains and Sacred Objects (<http://www.worldarchaeologicalcongress.org/about-wac/codes-of-ethics/169-tamaki-makau-rau-accord>).

on repatriation and first people's rights]<sup>27</sup>, about her feelings towards this commercial. She answered that in her opinion “this commercial is not deliberately making fun of the Tollund man, but rather appropriate him as evidence for the apparently good influence of the mud on his skin. The conservational qualities of the mud are presented in an almost natural scientific manner, which is something Danes generally can relate to and appreciate.” In Denmark, we are used to see dead bodies on display in the museums, and the most famous of those are our most important links to the past—they are our ancestors. From childhood we learn about the Tollund man (on display at Silkeborg Museum), the Gravballe man (on display at Moesgård Museum and the Egtved girl (on display here at the museum). They give prehistory more “presence” (pers. comm. 2010).

This example illustrates the central point that context matters; that fact that the appropriation of Tollund Man involves explicit commercialization of his image does not necessarily entail that it is disrespectful. Substantial and perhaps surprising variability exists in the manner in which societies approach and utilize their heritage, including the bones and bodies of their ancestors. Whether an instance of appropriation is harmful depends on the sensibilities of both the source and the recipient culture, where these establish norms of significance that determine the propriety of a recontextualization.

### **How Can Harm Be Avoided?**

A necessary starting point for avoiding harm is to understand how and why cultural appropriation can cause harm. In the previous sections we have identified examples of appropriation that illustrate some of the ways in which it can cause social, spiritual, or economic harm, especially to Indigenous peoples for whom tangible and intangible heritage may be indivisible. We now turn to consider the potential of community-based heritage research as a process through which affected communities and concerned researchers can develop the kind of inter-cultural understanding that will put them in a position to recognize and avoid the kinds of harm we have highlighted here.

Generally responses to cultural appropriation are reactive; those who perceive or experience harm attempt to block the uses of their heritage they find insulting or injurious and, in some cases, to seek restitution (e.g., Howes 1995). The challenges here are exacerbated by the limited protection available for many aspects of cultural heritage. A proactive approach is likely to be more effective because it focuses on preventing harm rather than repairing the damage. And a community-based collaborative approach is especially promising because it builds into the core of a heritage management or research program questions about how participating and affected parties conceptualize potential benefits and harms, and how these might best be addressed.

Community-based participatory research (CBPR) developed out of social- or participatory-based research methodology that not only engages the community fully in the process, but works to ensure they are primary beneficiaries (Wadsworth 1998). Well established in fields as diverse as public health, forestry, sociology, and anthropology, CBPR is now making inroads in heritage studies as a way to ensure that the research is, from the start, designed to be relevant, respectful, and beneficial (Atalay forthcoming; Hollowell and Nicholas 2009: 147). Although CBPR takes many different forms, an integral aspect of such projects is a commitment to learn about core community values and concerns through consultation, interviews, focus groups,

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<sup>27</sup> See Gabriel 2010.

ethnographic study, and ongoing consultation; this is the basis for defining research goals and designing a research process that puts the concerns of affected communities these at the center of the process (e.g., Bell and Napoleon 2008).

A CBPR methodology is utilized in a series of community-based research initiatives being undertaken by the Intellectual Property Issues in Cultural Heritage (IPinCH) Project.<sup>28</sup> This international consortium is investigating how and why concerns and harms about intellectual property emerge, and how best can they be avoided or resolved. The case study component of the project involves community-designed studies to investigate local issues from the ground up. Here are two examples of projects that target cultural harm.

One IPinCH study developed in northern Canada by the Avataq Cultural Institute is organized around the question, “How can Inuit language and culture be preserved in the context of cultural tourism?” The indigenous Nunavimmiut people understand the need to strengthen their identity and develop a strong economic basis for the region. However, there is a danger that increased economic benefits of cultural tourism will have a negative impact on the cultural identity. The ultimate objective to make sure that tourism is not developed without community involvement and that it corresponds to what the Inuit want to share about their lives and their land (Gendron et al. 2010).

Another study focuses on *ezhibiigaadek asin (Sanilac Petroglyph Site)*, a historic park containing over 100 petroglyphs that is administered by the state of Michigan. For Saginaw Chippewa people, this is a sacred place. As project leader Sonya Atalay notes:

One of the petroglyphs at the Sanilac site depicts an archer. Oral traditions tell us that this archer depicts our ancestors shooting knowledge into the future for later generations to benefit. These images were recorded on stone because our ancestors knew a time would come when our language, traditions, and practices would be threatened by colonization—carving knowledge on stone ensured permanence. Caring for this place and for the knowledge held there are both part of traditional knowledge stewardship practices (Atalay et al. 2008).

The challenge for the Saginaw Chippewa’s Ziibiwing Cultural Center is to develop a co-management plan with the State of Michigan that recognizes the inseparable tangible and intangible aspects of this place. They would like to share this traditional place with multiple public audiences while protecting the knowledge and images from being co-opted and appropriated. Concerns about avoiding harm to this place are revealed in community values. For example, the roof erected over the petroglyphs to “protect” them is considered damaging because the rain can no longer cleanse the images; tribal women now do this so the power that resides in these images is renewed (**Figure 3**), and encourage their children to crawl on the images. Also, two tribal members who sought permission to use the image of the archer (noted above) for the logo of their sporting goods store were told that such use was inappropriate.

These two examples make it clear, first, that local and Indigenous communities are often interested in engaging with the wider world, but on their own terms and in ways that preserve cultural values and, second, that what counts as “heritage” and what constitutes proper its use

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<sup>28</sup> This seven-year international collaboration consists of over 50 archaeologists, lawyers, anthropologists, museum specialists, ethicists, and other specialists from eight countries, along with 25 partnering organizations. The project is funded by the Social Sciences and Humanities Research Council of Canada. For more information, see: <http://www.sfu.ca/ipinch>

or protection may vary widely. In particular, there are fundamental differences in how Western and non-Western societies conceptualize cultural heritage that affect how they use or protect tangible and intangible property. Understanding this is the necessary starting point for effective and satisfying heritage management.

In the absence of effective legal mechanisms to protect intangible cultural heritage, emphasizing cross-cultural understanding of community needs and concerns may be the only option available. The legal protections that exist typically only extend to those aspects of cultural heritage that have equivalents in Western society (e.g., registering tribal designs to limit unauthorized use). There is currently very little protection for traditional knowledge, such as is embodied in stories or clothing design (see Brown and Nicholas 2010). Some Indigenous groups have developed policies and protocols that identify their concerns to outside researchers and others, providing practical protection for their heritage. One example of this is the Protocol for Research, Publication and Recordings developed by the Hopi Nation.<sup>29</sup> Another is the IPinCH project now underway with the Penobscot Indian Nation of Maine to develop policies and protocols for culturally sensitive intellectual property. This study will identify issues the tribe faces regarding intellectual property associated with the cultural landscape, and also develop strategies for negotiations of agreements and protocols, cultural sensitivity workshops for non-tribal members, and a long-range management plan for Penobscot cultural information.

### Discussion and Conclusions

Within the context of archaeological practice, there has been growing awareness of the legacy of colonialism, manifest in the limited meaningful participation of descendant communities, and the out-flow of cultural capital from descendant communities (Denzin et al. 2008; Hollowell and Nicholas 2009). One response has been to develop more culturally appropriate and meaningful research methods (Atalay forthcoming; Denzin et al. 2008; Smith 1999), including Indigenous archaeology and related community-based archaeological approaches (Colwell-Chanthaphonh and Ferguson 2008; Nicholas 2008; Smith and Wobst 2005). To ensure that research not only causes no harm but is relevant and beneficial to the communities, these initiatives emphasize the need for ongoing negotiation, and draw inspiration from virtue ethics and debate in other contexts about the implications of concepts of stewardship and various formulations of the precautionary principle.<sup>30</sup> They are predicated on an appreciation that we must learn to recognize the limitations of our own hermeneutical horizons; the harms of appropriation can only be identified and avoided if the insularity of the Golden Rule is counteracted by robust cross-cultural communication.

We identify three promising theoretical, philosophical resources that may be useful in addressing the challenges. One is recent discussion of the demands of cross-cultural communication in the literature on deliberative democracy where, for example, Brandon Morgan-Olsen (2010) suggests that conventional (Rawlsian) requirements of public deliberation put considerable burden on those whose values, reasons for action, or justification for a policy recommendation derive from a minority culture; they are put in the position of translating their

<sup>29</sup> <http://www.nau.edu/~hcpcp-p/ResProto.pdf>

<sup>30</sup> There are several compilations of essays on archaeological practice that identify methodological, ethical, and other helpful resources, as well as providing examples of their application (e.g., Bell and Napoleon [2008], Bell and Paterson [2009], Hollowell and Carr [2009], Nicholas et al. [2009, 2010], and Rizvi and Laydon [2010]). Also see Bannister and Barrett's (2006) relevant discussion on the Precautionary Principle.

insights into terms that are legible in the dominant culture. Morgan-Olsen argues that there should be explicit recognition of the responsibilities of *listeners*, not just speakers; listeners should be accountable for extending themselves, finding ways to understand and translate reasons, interests, and concerns that are not familiar. We see in this discussion resources for characterizing the obligations of dominant culture interlocutors (researchers, heritage managers), and strategies by which culturally sensitive questions about the harms and benefits of cultural appropriation may be addressed.

Related insights come from the feminist and critical race theory literature on epistemic violence and epistemic injustice (e.g., Delgado and Stefancic 2001; Spivak 1998; Fricker 2007; Wylie 2005, 2011). Members of minority cultures or people who are marginal in other ways routinely confront systematic patterns of misrecognition of at least two kinds (as characterized by Fricker 2007): testimonial injustice, by which they are not recognized as credible knowers/speakers; and heremeneutical injustice, by which they find the dominant culture lacks the conceptual resources to articulate key elements of their experience. Recent analyses detail a range of related mechanisms by which the distinctive experience, analysis and insights of marginalized knowers are silenced (e.g., contributors to a forthcoming *Hypatia* cluster on “Epistemic Justice” edited by Wylie [2011]: Dotson, Lee, Mason, Gilson). Just these sorts of mechanisms are at work in the persistent denial or misrecognition of the harms of cultural appropriation; the strategies for counteracting epistemic silencing and misrecognition that are explored in this literature may be a rich resource for developing constructive, pro-active responses to the challenges of cultural appropriation.

Finally, the work of James Tully on intercultural constitutional negotiation converges on, and would seem to capture the underlying rationale of practices that have been instituted by archaeologists and Indigenous peoples who are engaged in productive collaborations. Tully observes that negotiation should begin with a recognition of difference, not the presumption that difference obscures an underlying (rational, universal) framework that is neutral with respect to diverse cultural values (1995: 116). One of us (AW) has summarized key aspects of Tully’s work that seem applicable in archaeology in these terms:

The need for this kind of communication—for the kind of sustained engagement necessary to build trust and understanding, sometimes across acrimonious differences—is pivotal to virtually every recommendation for collaboration that has been made by Native Americans and archaeologists alike. Beyond this, Tully outlines a process by which negotiating parties articulate for one another just what identity-significant values are at stake in the conflict under negotiation; he characterizes this as a matter of establishing “continuity.” This many Native Americans do as a matter of course when entering negotiations with archaeologists, and it is, in essence, what archaeologists recommend when they insist on the need to communicate clearly and publicly exactly what their goals are as archaeologists—what their interests are in archaeological sites and material. (2005: 24)

Mutual recognition and arguments of continuity provide a framework in which priority is given to understanding the harms, and the benefits, that may be associated with cultural appropriation in terms that matter to the affected parties. This is the basis for then designing a process for negotiating accommodations that take account of, even if they do not fully satisfy, the interests of all involved, subject to the principle that “what touches all should be agreed to by all” (Tully 1995:122).



To conclude, our aim in this chapter has been to draw attention to the harms that cultural appropriation may cause, even when they are well intentioned. We have noted that controversy about appropriation arises in connection both with tangible objects that have recognized economic value in the context of the appropriating culture, and intangible elements of cultural heritage that are more typically objects of appreciation or connoisseurship (e.g., performance and art practice, spirituality). In cases that most starkly illustrate the types of misapprehension with which we are centrally concerned, often what is at issue are fundamental differences in the conception of what counts as cultural heritage, what its significance is, and therefore how it should be treated. The key point here is that in many traditional societies there is no sharp separation of tangible from intangible property (as is typical in Western contexts); indeed, tangible heritage has no value or significance independent of the intangible heritage that gives it meaning. The salience of this distinction goes a long way toward explaining why, for example, the commodification of rock-art images on t-shirts and mugs, is problematic not only (or primarily) because it represents an economic loss but because it poses a threat to cultural identity and wellbeing. An economic calculus of harms and benefits, reinforced by dominant (Western/Northern, EuroAmerican) conceptions of property rights and their legal protection often works to obscure the dimensions of harm felt most acutely by indigenous communities, even when extended to the forms of intangible property recognized as having value under IP law.

Collaborative research is one means to address these challenges. Almost invariably it requires considerable investment of time and energy, and challenges practitioners to think outside the conventional horizons of their home disciplines and cultures, but the results can be enormously beneficial and mutually satisfying. Rather than treat collaborative work with descendant communities as a threat to the integrity of scientific research, as have some of its prominent detractors in archaeology, we join a growing number of colleagues who argue that it stands to greatly enrich archaeology epistemically and conceptually (e.g., Atalay 2010; Colwell-Chanthaphonh et al. 2010 in response to McGhee 2009; Wylie 2009).<sup>31</sup>

In this spirit we suggest that the key to understanding the value(s) of cultural heritage and to mitigating the harms of appropriation is to make respectful, mutually enriching cross-cultural exchange – about appropriation itself – an integral part of cultural heritage research practice.

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<sup>31</sup> We acknowledge the rich ideas of cosmopolitanism (Appiah 2006) that offer a variety of ways to negotiate the space between the end points of the spectrum of heritage valuation—cultural distinctiveness and cultural unity (e.g., Colwell-Chanthaphonh 2009; Meskell 2009), but adequately addressing its promise (and problems) is beyond the scope of this paper.

## Figures



Figure 1

While Egyptian motifs and replica antiquities are found throughout Harrods department store in London, they are showcased in the opulent Egyptian Room, designed for Mohammed Al Fayed, then owner of Harrods. The question of appropriation is complicated by the fact that Al Fayed is Egyptian by birth. Photo credit: George Nicholas



Figure 2

Inspired by ancient ceramics from Casas Grandes, Mata Ortiz pottery developed through the efforts of a single individual in the 1970s and subsequently become a community-wide "revival" that blends old and new forms. LEFT: 14th century hooded effigy jar from Casas Grandes compared with RIGHT: contemporary hooded effigy jar from Mata Ortiz. Private Collection. Photo credit: Gordon Nicholas



Figure 3  
At the Sanilac Petroglyph site (*ezhibiigaadek asin*) in Michigan, the rock face containing over 100 images, or “teachings,” is cared for by Anishinabe women. A roof erected by the State of Michigan Park Service prevents rain from cleansing of the images. Photo courtesy of Sonya Atalay and the Ziibiwing Center of the Saginaw Chippewa Indian Tribe.