

CULTURAL AND INTELLECTUAL PROPERTIES: OCCUPYING THE COLONIAL IMAGINATION

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Last spring, Canadians witnessed a remarkable debate on the pages of the Globe and Mail (Canada's self-proclaimed national newspaper). For three weeks, controversy raged about the propriety of writers depicting "cultures other than their own," whether it was appropriate to "tell someone else's story," and whether it was possible to "steal the culture of another." I was drawn to the debate because of its implications for my own work. For two years I have been working on a book, provisionally titled "Cultural Appropriations," and I had received a publishing contract under that title (Coombe 1993). Exploring the ways in which subaltern groups use media symbols, celebrity images, trademarks, and other commodified texts to forge identities and communities, I had constructed a concept of cultural appropriation as progressive cultural politics. Imagine my consternation, then, to find the term "cultural appropriation" officially defined by the Advisory Committee for Racial Equality in the Arts (for no less august a body than the Canada Council—source of all academic and arts funding in Canada!) The term was determined to mean "the depiction of minorities or cultures other than one's own, either in fiction or nonfiction"—a serious problem, to which government must attend (Godfrey 1992).¹

The ironies of my own response to this appropriation and definition of the term provoked me to reconsider the politics of legal and anthropological knowledge. At first I was annoyed; a term I had used to define a progressive, subversive form of cultural politics on behalf of subordinated social groups had been seized to exclusively denote the invidious practice of white elites stealing the cultural forms of minority groups for their own profit. I was uncomfortably aware that I had formed a proprietary attachment to the term, and that my own feelings of violation rather closely mirrored those voiced by corporations who were outraged when their trademarks were given unsanctioned connotations by minority groups.

Exploring my responses to this debate about the "cultural appropriation" of indigenous others, I will show how my professional identities both as lawyer and as anthropologist situate me conflictually with respect to two dominant discourses and their deployment in neocolonial struggles for political recognition. Liberalism and Orientalism, I suggest, function as dangerous supplements (Balkin 1987) in contemporary political debates, but the terms of such debates, are not necessarily dictated by the politics of their origins. In their quests for aboriginal title and self-government, First Nations peoples are simultaneously complicit with and engaged in the subversion of Enlightenment discourses of authorship, ownership, and culture. In their occupation of the spaces and positions afforded by the European lib-

1. An expanded version of this paper is forthcoming as "The Properties of Culture and the Politics of Possessing Identity: Native Claims in the Cultural Appropriation Controversy," Canadian Journal of Law and Jurisprudence, 5:--(1993).

eral imaginary, Native peoples may potentially transform the categories in which they are compelled to articulate their claims.

Whose Voice is it Anyway?

The debates about "cultural appropriation" centered upon a suggestion that government grants should not be made to writers who wrote about "cultures" other than their own, unless the writer "collaborated" with people of that culture before writing. The controversy generated by this suggestion quickly polarized upon familiar terrain. I will argue that these poles define a colonial imaginary that may well structure all political claims for cultural recognition.

In a series of letters to the editor, fiction writers protested the suggestion that writing the other should require the other's collaboration. In so doing, they evoked the tyranny of the state over the individual, the spectre of the Gulag, and the shadows of the Holocaust. As Timothy Findley interjected:

Put it this way: I imagine—therefore I am. The rest—believe me—is silence. What has happened here? Does no one understand? In 1933 they burned 10,000 books at the gate of a German university because these books were written in unacceptable voices. German Jews, amongst others, had dared to speak for Germany in other than Aryan voices. Stop. Now. Before we do this again. (Findley 1992)²

Other critics proclaimed the transcendent genius of the Romantic author and the absolute and unfettered nature of his imagination. Neil Bissoondath, for one, affirmed the absolute autonomy of his creative ego in a statement resplendent with the "I" of liberal individualism:

I reject the idea of cultural appropriation completely...I reject anything that limits the imagination. No one has the right to tell me who I should or should not write about, and telling me what or how I do that amounts to censorship...I am a man of East-Indian descent and I have written from the viewpoint of women and black men, and I will continue to do so no matter who gets upset (Godfrey 1992).

Another writer declared that for the past 35 years he had been appropriating "the voices of men, women, dogs, cats, rats, bats, angels, mermaids, elephants ...[and]

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2. Findley's letter was reprinted in OUT Magazine: Canada's National Gay Arts/Entertainment Monthly, July 1992. Canada's gay and lesbian communities have been disproportionately affected by the Supreme Court of Canada's recent upholding of Canada's criminal obscenity laws. A victory for mainstream feminists has become an opportunity for federal officials to seize and confiscate gay and lesbian erotica. This has created a climate of opposition to state censorship amongst gay and lesbian activists—which perhaps accounts for this letter being reprinted in a gay journal. Such a position, however, fails to consider the multiple dynamics of power at work in the deployment of the rubric of "freedom of expression."

salamanders..." and that he had no intention of consulting with them or seeking their permission:

In common with every writer worthy of his or her vocation, I refuse absolutely to entertain any argument demanding that I do so, or that I am to be in any way restricted in my choice of subject matter. I will not, in short, submit to such censorship...(Outram 1992)

One writer confidently asserted that "appropriation of voice is what fiction is," (Smith 1992) while another lamented that "if cultural appropriation had never been permitted, Puccini could never have written *La Boheme*, we would never had thrilled to Lawrence Olivier in *Hamlet* and we would have been denied the music of *Anna and the King of Siam*" (Driedger 1992).

In these constructions of authorship, the writer is represented as an autonomous individual who creates fictions with an imagination free of all constraint. For such an author, everything in the world must be made available and accessible as an "idea" that can be transformed into his "expression" which thus becomes his "work". Through his labour, he makes these "ideas" his own; his possession and control over the work is justified by his expressive activity. As long as the author does not copy another's expression, he is free to find his themes, plots, ideas, and characters anywhere he pleases. Any attempts to restrict his ability to do so are viewed as censorship—an unjustifiable restriction on freedom of speech. Possessive individualism and liberal democracy are both, thereby, affirmed. These are some of the central premises upon which intellectual property laws are based.

It is, however, somewhat peculiar to find these affirmations made so forcefully in a context so far removed from the possessive market society in which they arose. The inevitability of competitive market relations under which all writers were equally subjugated, was precisely the condition that the Canada Council's subsidy policies were designed to eliminate.

Critical legal scholars have addressed the inadequacies of liberal individualism and its understanding of subjectivity, cultural agency, and freedom of expression (Coombe 1989, 1991b, 1992 and sources cited therein). The social experiences of authors inevitably shape their voices and there is no doubt that the voices of people with remarkably similar social experiences continue to dominate the cultural landscape. The liberal individualism expounded in these letters determinedly ignores the balance of power in Canadian publishing and media. Everyone here is implicitly equal in their capacity to write, or be written about—to speak or be spoken for. Such a position purports to be apolitical, but manages only to be ahistorical and blind to relations of power. It ignores the very real social lines along which representation has been structured and the very real difficulties faced by some social groups to represent themselves and speak on their own behalf. Cultural representation and political representation are related. It is, for example, inconceivable that a vehicle could be marketed as "a wandering Jew," but North Americans don't bat an eyelash when a Jeep Cherokee passes them on the road or an advertisement for a Pontiac flashes across their TV screen. More people know Oneida as a brand of silverware than as the name of a people and a nation.

For those who experience social stereotyping, it is certainly insulting to have your identity analogized to those of mermaids and angels and cold comfort to know that an author has no intention of speaking to salamanders or elephants before he writes about them, either. One can only assume that minority peoples in Canada occupy the same mythical and inarticulate status in the writer's imagination. In such analogies, Canadians are denied humanity, acknowledged only as archetypes—they are not recognized as human beings to be engaged in dialogue, but are reduced to cultural fodder for the liberation imagination.

Moreover, the very context in which this debate arose has been conveniently elided. Puccini was not, after all, seeking funding from a government officially committed to multiculturalism when he wrote *La Bohème*, Warner Brothers would have "thrilled" us with Lawrence Olivier with or without government funding, and if the Canada Council were asked to fund a musical as blatantly paternalistic as *Anna and the King of Siam*, we should indeed question the propriety of public funding. Market forces may dictate that sentimental works nostalgically evoking histories of colonialism will continue to be made; but government subsidization of the arts might aspire to other criteria for excellence.

But if the myopia of Romantic liberal individualism blinded one side of the debate, the more subtle hues of Orientalism coloured the other. And if my background in Critical Legal Studies made me suspicious of the claims of the former, my anthropological knowledge made me critical of the latter. Proponents of the Canada Council suggestion defended their position on grounds of cultural identity and the need for authenticity in Canadian cultural life. Speaking on behalf of the Canada Council, director Joyce Zemans claimed that cultural appropriation was a serious issue because "we have a need for authenticity. In our society today, there is a recognition that quality has to do with that authenticity of voice" (Godfrey 1992).

It is implicitly assumed here that Canada is a country in which there are multiple discrete cultures, that a person has a singular culture of her own, that has a history and tradition of its own, and that people possess authentic identities that speak in essential voices fully constituted by cultural tradition. If, as a critical legal scholar, I am disturbed by the Romantic imperialism of those who claim the right to appropriate the voices and stories of minority others, as a late 20th century anthropologist, I cannot rest easily with the monolithic and essentialist constructions of cultural tradition propounded by those who would resist the author's untrammelled expressivity.

The article that began the debate was titled "Whose Voice is it Anyway?" (Godfrey 1992). Native writers insisted that white writers refrain from telling stories involving "Indians" to allow native peoples to tell "their own stories". Questions of "who's stealing whose stories and who's speaking with whose voice" had long been posed by Native cultural activists as "cases of cultural theft, the theft of voice" (Keeshig-Tobias 1990). We are told that "stories show how a people, a culture, thinks" and such stories could not be told by others, without endangering authenticity and the true authority of cultural works. The Canadian culture industry had long been accused of stealing other's stories—particularly those of native peoples—and thus destroying their essential meanings in authentic traditions. Native artists asked if "Canadians had run out of stories of their own" (*ibid*) and claimed that the telling of native stories was theft, "as surely as the missionaries

stole our religion, the politicians stole our land, and the residential schools stole our language" (ibid).

If by now you are feeling a bit uncomfortable I think I understand. I find myself supportive of the political struggles of native peoples to represent themselves, but uneasy with the rhetorical strategies being employed by those sympathetic to this end. As anthropologists we have recently been persuaded to resist the siren call of "authenticity", the reification of "cultures", and the continuity of "tradition" (Clifford 1988; Coombe 1991a; Fox 1992; Clifford and Marcus 1986; Marcus and Fischer 1985, Rosaldo 1989, etc). Today, we focus instead upon improvisation, productive hybridity, the creative poetics of identity creation—cultural conjunctures rather than timeless essences.

The "creolized interculturalures" we celebrate, however, are made and the cultural resources with which emergent identities are constructed may be tightly embraced elsewhere. For example in his otherwise politically sensitive work, Time Passages (1990), George Lipsitz waxes ecstatically about the emancipatory cultural creativity of the "Mardi Gras Indians"—black youth who dress and dance in Plains Indians costume during elaborately rehearsed street pageantry in New Orleans. Their "Indianness" is drawn from the Buffalo Bill imagery engrained in American popular culture. They know they are not "real Indians" but one gets no sense that they know there are any, or, if they believe, as a young girl I know confidently asserted, that there are no real Indians, any more than there are real trolls, witches or fairies. In our constant "utopian hope for reinventions of difference" (Clifford 1988) I sometimes fear that we may simply re-inscribe the authority of the Romantic author in the liberal imagination and his unfettered right to creativity.

Maintaining respect for "cultural tradition", however, also risks reinstating the liberal individual, albeit in his guise as property-holder. The concepts of culture, authenticity, and identity in this debate were posed in proprietary terms, as debates about propriety so often are in contemporary politics. In defence of the Advisory Group position, the chair of the Canadian Writer's Union asserted that the issue was one of ownership and likened minority claims to the rights of copyright and trademark owners to control the use and meaning of imagery (Godfrey 1992).

But what do legal domains of property hold for First Nations peoples attempting to control their own representations in consumer cultures? The law offers two visions of property that reflect two visions of culture, neither of which corresponds with Native visions of self-empowerment. On the one hand, intellectual property laws enable individual artists imagined as Romantic "authors" to prevent others from reproducing their works on the grounds that the "work" (that is, the representation), embodies its author's unique personality and intellect. On the other hand, cultural property laws enable social collectivities to physically control material objects that are seen to embody the singular tradition and identity of a "culture". These legal categories constitute a Western colonial imaginary that culturally impoverishes the self while it Orientalizes the other—defining "peoples with and without culture" (to borrow a phrase from Rosaldo 1989). In Colonising Egypt (1988), Tim Mitchell shows how these two representations of "culture" define a colonial configuration of power—a peculiar metaphysics of modernity—that marked the truth of imperial power in the 19th century.

James Clifford (1988) has delineated the imperialist "art/culture" system to which I believe our legal categories correspond. Aesthetic works of art are valued as the expressive works of authors—they have originals which are venerated, and their reproduction is so closely controlled by copyright laws that even imitation is deemed theft. Authentic artifacts on the other hand, are valued as physical embodiments of a collective cultural tradition and their movement as objects (but not as representations) is controlled by cultural property laws that enable the nation to exclusively possess its "identity". Richard Handler (1985, 1988, 1991) points to the tropes of possessive individualism that characterize such cultural property laws. Western individualism presupposes the singularity of "an identity" that is defined by its essential sameness in constitution and by the property it possesses. In the political arena, nations and social groups are imagined as "collective individuals"; bounded and internally homogeneous. Thus, in 1976, UNESCO formulated the principle that "cultural property is a basic element of a people's identity" and argued for restitution or repatriation of objects "of overriding importance for cultural identity—for the personality of particular peoples" (Handler 1991 at 67).

I agree with Handler that it is always necessary to articulate political claims "in a language that power understands" (ibid at 71) and that the language that power understands employs the logic of possessive individualism. To a large degree, I share his pessimism about the growing homogeneity of political discourse. The perils of making claims in the name of the possessive individual, writ large, are certainly real ones. For example, in a presentation on native cultural autonomy and appropriation at a meeting of independent film makers, Metis videomaker Loretta Todd quoted Walter Benjamin. She was promptly accused of appropriating Western culture! When she responded that she was a part of Western culture—how could she help it?—and Benjamin was of that culture, she was told that white use of native images and stories was clearly the same as her use of Benjamin (Todd 1990) because native images were now simply a part of contemporary culture (with a capital C). When a Toronto artist was accused of misusing (and distorting) the symbolism of the sweatlodge ceremony, he legitimized this appropriation on the basis of his childhood visit to a Plains Indian museum (Fabo 1989-90). Native imagery had presumably worked its way into his creative psyche and the license of artistic genius could not thereafter be suppressed.

Other white artists, self-proclaimed "environmentalist tribesmen" responded to criticisms of their use of native ritual by slandering their critic as "a self-appointed spokesperson for Native artists" (Skuse, Kozzi, Brousseau 1989-90). In speaking for a culture to which one makes a proprietary claim, one always risks allegations that the identity one must possess to make such claims is not the undivided self demanded of the property holding individual. No one asks white writers, however, what gives them the right to define freedom of expression, censorship, or the universal heritage of humankind (Culture with a capital C). The "author" whose property is intellectual has an unquestioned authority accorded to the very creative genius that marks his position. Those who must make their own political claims as a collectivity, on behalf of a culture, however, cannot control representations of the social without risking accusations that they are socially unrepresentative.

But, and this is an aspirational and utopian "but," however pervasive the categories of Western liberalism have become, however universal its tropes, their mean-

ings are by no means guaranteed. My own students' interpretations of the Canadian Charter of Rights working with lesbian and gay rights groups and poverty activists suggests that Enlightenment political categories contain hidden potentials when they are articulated by new agents with new agendas. The concept of "aboriginal title" developed by First Nations' peoples is subversive precisely because it uses the language of political liberalism to undermine the colonial infrastructure upon which economic liberalism is built. Economic liberalism presupposes the alienability of "land" from social relationships, material culture, and cultural representations (hence distinctions between real property, personal property, cultural properties and intellectual property). "Aboriginal title" as a key element of political autonomy, however, re-integrates relations between meaningful space, social relationships, sacred objects, and significant texts that the colonial imaginary ripped asunder. In their occupation of the spaces of the liberal legal imaginary, native peoples may well challenge and transform prevailing relations between politics, property, and propriety.

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