Jennifer Guiliano's Review of Who Owns Native Culture*?*

Michael F. Brown, Who Owns Native Culture? Cambridge, MA: Harvard University Press, 2004. x + 315pp. Bibliographic references, acknowledgements, index. $16.95 (paper) ISBN: 0-674-01633-5

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Michael F. Brown's Who Owns Native Culture? examines the intricate intersections of culture, property, and legal rights in order to probe the extent to which laws can control the movement of ideas. "Does it make sense for ethnic groups," Brown asks, "to define their cultural practices as property that cannot be studied, imitated, or modified by others without permission? How far can democratic states go to provide indigenous peoples with cultural protections without violating the rights of the general public?" (p.7). Surveying culture at its broadest to include early twentieth-century anthropological materials, copyright cases, contemporary trademarks, and debates over biopiracy and sacred religious sites, Who Owns Native Culture? argues that the need to create democracy and reinforce the existence of Native culture and life should supersede the question of legal ownership. The crux of the problem, according to Brown, is "not who owns native culture but how can we promote respectful treatment of native cultures and indigenous forms of self-expression within mass societies" (p.10). Drawing from the works of cultural anthropologists, including Clifford Geertz, and theorists of indigenous cultural property, Brown successfully argues that the use of law to secure individual ownership can be potentially limiting to indigenous peoples and the larger society in Australia and the United States. In recapitulating a terrain familiar to historians and anthropologists, Brown capably delineates the tensions and schisms within indigenous societies regarding their cultural heritage and contemporary use. Yet, for this reader, Brown never truly answers three fundamental questions: who controls the authority of use and access when the community is in disrepair or dispute? What are the limits of cultural exchange when there is no legal recourse to control the reproduction of cultural knowledge? And how has the legitimization of indigenous cultural authority been obfuscated by the legacies of colonialism?

Who Owns Native Culture? explores a variety of manifestations of cultural knowledge and the repercussions of communal versus individual ownership. Beginning with early anthropological efforts to capture "vanishing" Indians under Reverend Henry R. Voth and Frances Densmore, Brown argues that the use of physical force to capture and reproduce Indian knowledge was a clear violation of the relationship between Indians and anthropologists. The relationship between the anthropologist and the subject, namely between Hopi and Ojibwe Indians and Voth and Densmore respectively, assumes both parties' freedom to control the exchange of knowledge. Without the freedom of consent, the socio-cultural relationship and its products are flawed. The problematic nature of individual versus communal consent arises further in the case of Bulun Bulun and Milpurrurru v R and T Textiles Pty Ltd. In his conclusions about Bulun Bulun, Brown follows the Australian court decision to argue that an individual can secure legal protection for artistic productions based on communal knowledge but that the

community itself does not have ownership rights. It is this linking of communal ownership to individual rights that offers “troubling possibilities” for indigenous peoples, according to Brown. Delineating who constitutes a community legally positions “the community” as inviolate. It firmly hardens who can claim individual communal authority and displaces many groups, including urban Indians, from dialogues about cultural ownership.

In the next phase of the text, Brown shifts from the idea of “communal” ownership to corporate ownership in order to consider trademark law and biopiracy, respectively. Brown convincingly argues, in the case of trademark debates over the Zia Sun symbol and the New Mexico state flag, that there is an historical pattern of cultural borrowing. While debates over the use of these symbols reveal the weaknesses of copyright law, namely its “time-limited quality and its inability to effect absolute control over protected work,” the difficulty of enforcing trademark law lies in the inability to define original ownership (p.72). More specifically, the issue of the use of tribal-insignia by Native and non-Native groups alike, Brown writes, reveals the challenging nature of defining what constitutes official trademark insignia. Due to cultural exchanges that have blended Indian and non-Indian symbols and systems together, it is impossible to render clear authority of ownership. “The most pressing challenge for native societies is not the greed of businesses that traffic in indigenous symbols…The fundamental problem is technology, which provides new ways of reproducing information and images whose circulation was once more easily monitored. This threatens traditional authority and the authority of tradition itself” (p.93). The commercialization of indigenous networks of knowledge about plants on behalf of global pharmaceutical corporations further obscures the idea of one individual having legal ownership over a specific indigenous knowledge. The efforts of initiatives like the International Cooperative Biodiversity Groups Program (ICBG) and corporations like Merck and Monsanto to profit from knowledge held by indigenous groups reveals tension between intellectual property, commercial viability, and corporate ownership. Projects like ICBG Peru and ICBG Maya contend with the ownership of particular plants and their medicinal uses by native peoples on the one hand and demands of market economies where wonder drugs have become paramount in generating capital. Brown believes that the efforts to secure legal permission from the myriad of indigenous groups who may share the knowledge of a particular plant and its uses is fruitless. Instead, pharmaceutical companies should practice informed consent with the group who initially supplies the knowledge and should construct a system that provides aid to these societies including a percentage of the financial windfall. Somewhat idealistically, for Brown, the ultimate goal of bioprospecting and trademark law should be a simultaneous concern for ethical use and cultural need.

Turning from the extraction of cultural knowledge to the use of physical space, Brown argues that authority of ownership is not necessarily tied to cultural knowledge. Brown traces disputes over land use based on religious significance at Bighorn Medicine Wheel and Devil’s Tower in the United States as well as Hindmarsh Island in South Australia. These three physical spaces exemplify the ability of negotiation to occur on a “middle ground” that can be attuned to native concerns while still maintaining democratic procedures of use. In turning to Hindmarsh Island, Brown reveals the

problematic nature of religious and cultural knowledge within indigenous societies. When the state government proposed a bridge and a marina that would dramatically change the landscape of the island, a group of Ngarrindjeri filed a complaint that the island was a sacred religious space known only to their small group. The Ngarrindjeri quickly divided between those who believed this knowledge was legitimate and those who felt it had been fabricated in order to protect the ecological environment in the area. The outcome was, for Brown, less important than the ways in which the debate illustrates the obfuscation of determining a simple claim to physical space. While convincing in demonstrating the problematic claims to public space, the determination of claims to public space largely ignores the colonial legacies of land dispossession.

“The reality of pluralistic democracy,” Brown writes, “is that groups living together must be free to talk about one another’s history and culture” in order to build a “durable civic life" (p.224). More specifically, legal restrictions on the use of traditional ecological knowledge, public spaces, cultural symbols, and indigenous beliefs would create divisions instead of affirming the collective good. It is in touting the collective good over that of individual and communal rights that ultimately rends the fabric of cultural borrowing as Brown articulates it. In this, he underplays the importance of Native American tribes as “domestic dependant nations” and largely avoids recognition of their legal right to identify and protect cultural resources including communal beliefs. The US has a long legal history that recognizes nation-to-nation status in the administration of state and federal matters. While Brown offers many opportunities to interrogate the intersections of cultural knowledge and legal ownership, he leaves open fundamental questions including: Would the extension of indigenous sovereignty into federal copyright claims and debates over ownership alter the landscape of debate? Further, if the legal system is not the way in which to challenge the process of cultural borrowing, where should indigenous groups turn when the democratic public is inattentive to its concerns?

Biography

Jennifer Guiliano specializes in the intersections of culture, sport history, and racial/ethnic hybridity at the University of Illinois at Urbana-Champaign in the Department of History. She is currently completing her dissertation “Native Americans on the Field: Sports Mascots and the Consolidation of an American Empire, 1920-2005,” under the direction of Dr. Dave Roediger and Dr. Adrian Burgos.