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Property in Question

Value Transformation in the Global Economy

Edited by

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- Spivak, Gayatri. 1999. *The Critique of Colonial Reason: Toward a History of the Vanishing Present*. Cambridge, MA: Harvard University Press.
- Timber Creek Land Claim. 1985. *Report by the Aboriginal Land Commissioner, Mr. Justice Maurice*. Canberra: Australian Government Publishing Service.
- Trigger, David. *Whitefella comin': aboriginal responses to colonialism in Australia*. Cambridge: Cambridge University Press.
- Warner, Michael. 2002. *Publics and counter-publics*. New York: Zone Books.
- Watt, Bob. 1992a. "Flogging a custom, a court told." *Northern Territory News*, 28 July, p.3;
- . 1992b. "Flogging outside law." *Northern Territory News*, 6 August, p. 3.
- Weber, Max. 1994. *Weber, political writings*. Edited by Peter Lassman and Ronal Speirs. Cambridge: Cambridge University Press.
- Wright, A., (ed.). 1998. *Take power like this old man here: An anthology celebrating twenty years of land rights in Central Australia, 1977-1997*. Alice Springs: Jukurrpa Books.

Cultural Rights and Wrongs: Uses of the Concept of Property

Michael Rowlands

An aspect of cultural rights is the protection of "cultural property." Cultural property requires protection to the extent to which it forms the objectification of a right to collective expression and identity (cf. Niec 1998). Unlike human rights, which are rights of the individual, cultural rights are claimed collectively by those who identify themselves as of common descent, ethnic origin, or shared religion. Moreover, such claims are justified by the argument that cultural property is not a matter of individual creativity but rather of inheritance through collective transmission from the past into the future. This would sum up the argument that there is a special relationship between cultural rights and cultural property, one that stands in a certain paradoxical relationship to that between human rights and personal rights in property. The purpose of this chapter is to explore the extent to which there is a conflict between individual and collective rights and, if so, what implications are to be drawn from it.

The potential conflict that might exist is embedded in notions of property and, in particular, in the well-known distinction, formulated by Maine in *Ancient Law*, between "movable" and "immovable" goods (Maine 1986 [1963]: 264). Cultural rights legislation is influenced by the evolutionary notion that the ownership of movable goods was encouraged by the development of market economies and the freeing of personal property from collective controls. Because of this assumption about the association of cultural rights with premodern property relations, cultural property has suffered from imprecise definition and sometimes downright hostility, from being characterized as a "backward" form of collective ownership. As Posey and others have argued,

cultural rights are seen to restrict individual ownership and the alienation of goods, thus "threatening such basic tools of international industry and trade as Intellectual Property Rights" (Posey 1998: 42). The notion of "inalienability," which was opposed to "modern" forms of exchange and value production, had therefore to be reappropriated and reconfigured by anthropologists into forms of proprietary claim that, rather than being remnant or peripheral, could instead be recognized as constituted within modern market relations (cf. Gell 1992, Carrier 1997). Annette Weiner pointed out, citing Maine, that by imitating the distinction between immovable and movable goods, inalienability requires that goods inherited through time should not at the same time be freely exchanged. The "paradox of keeping-while-giving" is the reconciliation of exchange with the ideal that "what makes an object inalienable is its exclusive and cumulative identity with a particular series of owners through time" (Weiner 1992: 32). But this argument did not resolve the conflict between collective and individual rights except by reasserting not only the primacy of the former over the latter but also the priority of inheritance over exchange, i.e., the primacy of "keeping-while-giving."

Several recent studies using Weiner's argument have shown the variable nature of alienable/inalienable categories and the ways in which both forms of property may coexist (Kopytoff 1986; Godelier 1999; Strathern 1988; Thomas 1991). If cultural property is not some evolutionary remnant or the consequence of a lack of exchange value, then we need to conceive of cultural rights as a means of defining a distinct form of property, which can share with more individualized notions of property the potential for the creation of value. The obvious example of this is the exchange value of an image. However singular or unique an item of cultural property might be, not only can one pay to see it in a museum and gallery but also it can have an exchange value realized through the sale of copies of images and their copyright. In this case it scarcely matters whether "control of one's own culture" is really about keeping cultural knowledge to oneself alone or is a means of claiming a form of property that can generate a unique form of exchange value. It is the inalienable and collective quality of cultural property that makes this a different form of value and orders social relations as a collective right to lay claim to its possession and to profit from this.

Moreover, significant changes have been recognized in the conditions for making such claims. The moral rights dimension of intellectual property may account in part for this since it is technologically easier

than ever to lay claim to an original and sell a copy (cf. Brown, this volume). But besides the value question, there is also a wider political context, which asserts that cultural property, defined as heritage, now plays a much larger role in defining the right to exist. In an influential article on the rise of cultural fundamentalism in Europe, Verena Stolcke mentions that "cultural difference is now understood increasingly in terms of the possession of distinct cultural heritage rather than idioms of race and ethnicity" (Stolcke 1995: 5). By drawing our attention to a perceived need for a discrete cultural identity, she highlights a point made by others: namely, that a shift has occurred from a politics of redistribution to a politics of recognition. Both Charles Taylor (1994) and Nancy Frazer (1995) have argued that gaining cultural recognition has displaced socioeconomic redistribution as the remedy for injustice and the goal for political struggle (the redistribution-recognition dilemma). The notion that cultural difference is simply a strategic response to the need to control and redistribute resources seems quite antithetical to the essentializing claim of a politics of recognition. The right to exist asserts instead a claim to a unique identity supported and identified with an objectified notion of culture that may be gained or lost but not exchanged. What this means is that in order for injustice to be recognized, it is necessary not only to deal with the conditions that erode identity but also to arouse feelings of loss and the need of redemption.

In Stolcke's argument we can recognize a trend toward basing identities on claims to essentialist pasts and the purification of cultural origins. Cultural heritage, by claiming to justify the possession of a distinct cultural property as a right, objectifies these identities. Moreover, there seems to be no problem in defining heritage as a unique cultural property and also treating it as a form of exchange value realized through tourism, sale of souvenirs, theme parks, and the "Disneyfication" of the past. The growth of the heritage industry is one example of a politics of recognition, which attaches value to monuments, objects, and intangible heritage so as to define identity through the possession of cultural property. Instead of a universalist notion of property through which rights of legal ownership can be assured, a gray area of moral/ethical accessibility opens up, based on the creative power of reuniting people with their pasts. Separation and grievance for a loss unfulfilled, whether of people or cultural things, also entails demands for recognition (cf. Feuchtwang 2003). It can be argued that what makes particular forms of cultural property the objects of hatred and violence is precisely the conditions which transform grief into unresolved

grievance, loss as suffering whose resolution can only be anticipated in a future act that holds the "community of suffering" together.

Cultural Property and Rights

On 6 December 1992 at Ayodha in Northern India, the Babri Masjid, a 450-year-old mosque, was attacked and demolished by Hindu fundamentalists. They claimed that the mosque stood on the foundations of a Hindu temple marking the birthplace of the legendary Hindu hero-king Rama. The mosque had been built by Babur, the first Mughal emperor in 1528–29 AD, and the site became an object of dispute between Hindus and Muslims during the nineteenth century, reaching a climax in 1949 when the Indian government ordered that it be closed. Although the background to Hindu and Muslim politics has been extensively discussed, the role of archaeologists in the dispute is less well known (cf Layton, Stone, and Thomas 2001). B. J. Lal, the head of the Indian Archaeological Service, had excavated the site fifteen years before and written a credible report that produced no evidence of an earlier Hindu temple destroyed by the first Mogul Emperor. But leading up to the attack on the mosque, material evidence was produced based on site plans that not only had such a temple existed but also fragments of wall decoration and ornamented pillars had been found earlier and reburied on the site. These pieces were "found again" by activists during the pillaging of the site and put on display to demonstrate the veracity of the case against allowing the mosque to remain standing on the birth site of Rama. No doubt the activities of archaeological experts may in the long run be found to be less than professional in this context. But that is not really my point, which is that all concerned now operate with conceptions of cultural heritage which see it as rightfully belonging to named groups, acting as indigenous systems of collective allegiance. The facts that have led Hindu nationalists to attribute value to a set of objects can be seen to have nothing much to do with the intrinsic value of the objects *per se*, but rather with a meaningful narrative created in interaction with these objects over a long period and activated at a specific moment of perceived crisis. The destruction of mosques in Bosnia has a similar interpretative frame, stretching for over a hundred years but made active only in special circumstances of the collapse of the former Yugoslavia (Layton, Stone, and Richards 2001).

Anthropologists have recently been considering indigenous conceptions of the "ownership" of cultural practices. "Copyrighted cultures" are clearly of significance for local peoples in a variety of contexts but

they also seem to be accompanied by a "ring fencing" of authenticity as some kind of culturally irreplaceable core (Brown 1998). Spivak has described this "right to culture" as strategic essentialism (Spivak 1999: 230), in order to overcome the opposition between constructionist and essentialist or relativist views in the literature on ethnicity. There is nothing surprising in the fact that people can be strategic and politicized about a sense of identity nor that this impulse precedes and certainly continues long after the control of a resource has been accomplished. Increasingly, we find that the objectification of culture as a possession can be recognized as constitutive of a "long-term identity," an identity that is not a colonial or postcolonial invention. This suggests that in objectifying their "culture," people not only claim to possess it but do so in a self-conscious and self-reflexive manner. In other words, people do "live" their cultural practices but also reflect upon, evaluate, discuss, modify, and dispute them, and this has taken specifically politicized forms in both earlier and more recent contexts (Harrison 2000: 663). We end up with a growing consensus that the objectification of culture as something possessed is a fairly constant if not universal condition with long-term historical antecedents, as well as more recent modernist trends. But at the same time the processes of such objectification have changed and are changing, which in turn relates to altered conceptions of the nature of property.

Richard Handler has been particularly influential in reorienting anthropology back to viewing culture as a form of property. The significance of an object, he claims, lies not in any intrinsic value *per se* but in the moment and act of its completion. The museum quality of an object may, he argues, be summed up as representing a sense of closeness between the observer and the moment when "the craftsman finished and use began" (Handler 1988: 23). Handler describes this as an example of modern "possessive individualism," wherein value is generated when human beings inscribe labor on a part of the natural world. There are clearly other ways to imagine human creativity and the relation of humans to material objects, which does not privilege this particular view of individual agency.

The notion of authenticity as an original state that should be preserved at all costs has also been challenged by those who would see a contested and dynamic nature in the meaning of cultural heritage (Kopytoff 1986; Gosden and Marshall 1999; Holtdorf 2001). Nevertheless, the values attached to cultural property encompass a whole range of claims, from those of Zuni for their war gods, which, once returned, are meant to disintegrate back into the earth to do their work, to Maori

who wish to keep written records of their achievements and history. In this respect, the practices of conservation and museums have never been immutable. The idea that there is a dominant mode of preserving or conserving cultural heritage, which basically privileges material longevity as an assumed goal, is now widely questioned. The “test for authenticity” in the World Heritage Convention guidelines was effectively challenged for its lack of attention to cultural values when a Shinto shrine in Japan was turned down for the World Heritage list because it was traditionally dismantled and renovated every twenty years (quoted in Wharton 2002). The Nara document on Authenticity was effectively a turning point, which shifted the focus in World Heritage legislation from conservation based on “universal value” to “local interpretation.”

What these shifts also connote is that if value is not an intrinsic aspect of objects but a function of our conceptual and social interactions with them, culture and property are aspects of the same field, are indivisible and broadly speaking inseparable. In this way, Handler argues against attributing objective reality to “things” since it claims to provide an authentic experience by connecting an audience to an objective past, i.e., a view of value and the meaning of objects that is intrinsic rather than relational to that past. But if we follow Stolcke’s observation, we are faced by a number of issues, which suggest that the objectification of culture as patented possession bestows intrinsic qualities to things as part of the right to control culture as property. Many cases can be cited in which culture is owned as a kind of patented possession, a right based on some form of purchasing or licensing (e.g., Harrison 2000). Moreover, like modern copyright, rights act as a means of authorizing circulation and distribution of access to property, rather than positing diffusion through uncontrolled instances of “cultural contact.” Harrison argues for a certain kind of cultural self-objectification developing in Melanesia, as a response to the need to protect threatened identity and the assertion of rights to commonly held cultural property. But notions of rights also permit the separation of culture from property in creative ways precisely because of the fact that this can be used strategically to exclude others from possession, i.e., in terms more compatible with international property law.

This is why we can discern several novel assertions about the nature of culture in a number of international conventions on cultural rights. One is the value of self-awareness about belonging to a particular culture and of acting upon it. Practices which were “taken for granted” in the past now become acts of self-awareness and the foci for political action. This can of course be symptomatic of a certain decline in confidence

about “having a culture,” much as you gasp when you can’t breathe. The second, for example in repatriation debates, is the acceptance that participation in political life requires the possession of a culture. But the extension of a rights terminology into the right to “have a culture” creates ambiguity precisely through the modification of the legal definition of rights with the term “cultural.” What Michael Lambek (1998) rather disparagingly has called the “contents and container view of culture” is alive and well in the discourse of international conventions on cultural rights. Both these assertions are not new in themselves, but in the 1990s they gained a certain salience – and, in particular, considerable attention from specialists attempting to turn moral rights into legal rights in order to find a way of transcending this dualism.

Attaching Value to Cultural Property

The turn in academic discourse toward discussing objectification of culture, of knowledge as intellectual and cultural property, has been linked to recognition of cultural rights in the public sphere (c.f. Brown 1998, and this volume; Povinelli, this volume; Strathern 1996) and in turn to the political implications of the rise of a “heritage culture” (Lowenthal 1998). Both these trends support the right to preserve “a traditional way of life,” as enunciated in the 1948 UN Convention on Human Rights.

Cultural Rights legislation stems from the 1948 UN Convention, which vaguely recognized that besides the killing of people, destroying a people’s way of life as “traditional” denied them the right to exist (Schmidt 1995; Prott 1998). It was vague because international legislation was and to large extent still is directed to preserving the rights of individuals, which has meant that the idea of preserving a group exists as a moral issue rather than a legal right. The 1990s having been declared the decade of cultural development, and the World Commission having produced the report *Our Creative Diversity*, attempts were made to basically turn this vague notion of tradition into a legally enforceable right. Worries about overconfident assertions of cultural rights have since then generated a dialogue about how to qualify the language of rights with the meaning of culture, i.e., is it rights over creativity, or rights to preserve or have access to “a culture,” or the right to save “a culture” or sustain cultural diversity analogous to biodiversity?

Confusion also occurs in the variety of terms used. Terms such as *multi-culturalism*, *cultural diversity*, *cultural pluralism*, *cultural fusion*, *hybridity* are used almost as if they are interchangeable instead of

denoting significantly different concepts. Cultural diversity, for example, is used with increasing frequency in preference to multi-culturalism because the term better implies diversity in unity rather than a broad acceptance of cultural difference. Cultural fusion is disliked because of its implications of erosion and loss, and hybridity is preferred because of the possibility of choice. Because of these difficulties, there has been a tendency to avoid overgeneralized legal definitions, e.g., in the reaction to the UNIDROIT convention on illegally stolen and exported cultural objects, whose implementation has required very specific limitations to applying it. Moreover, there has been a reluctance to appear to be imposing universalized "rights culture" on the bearers of "traditional cultures," driven, in the case of cultural rights, by the strong input of indigenous-peoples movements. The reburial issue, for instance, highlights the strain between indigenous peoples who, feeling themselves under threat, need to "control their culture" and those who believe that through NAGPRA legislation, objects of scientific interest are being destroyed. Ironically, making "indigenous peoples" the repository of cultural knowledge transmitted from the past – as if this has had nothing to do with contemporary issues – is equally resented: "I am tired of going to international conferences and being relegated to the 'beads and feathers' group as though I cannot be expected to know anything about medical or botanical resources and their management" (an indigenous representative quoted in Prott 1998: 171).

Activists' use of the language of rights to push a case may give several meanings to "traditional culture." The Hindmarsh Island affair, however, demonstrates the problems that arise when the presence of statute law to define tradition is paramount in a claim. In this case, the definition of authentic tradition, supported by an anthropologist, was used by a group of Aboriginal women to prevent building a bridge to the mainland from an island associated with their secret knowledge. When another group of Aboriginal women came forward denying the claim made by the original group of women about the nature of secret knowledge (that knowledge of fertility was secret and should not be disclosed in the case), the issue of what constitutes "traditional culture" was raised. Also, if this meant that "traditional culture" could change or be dynamic in adapting to contemporary political questions, then the fidelity of culture itself would be brought into question (Weiner 1999). Joyce Linnekin summed up the dilemma thus: "writing about the contemporary construction or the 'invention of culture' undercuts the cultural authority of indigenous peoples by calling into question their authenticity" (Linnekin 1991: 446).

Disputes over rights of access to cultural property, which involve debates over authorization and legitimation (i.e., who has the right to possess it, display it, use it as part of a "politics of belonging"), make the concept of ownership problematic, not necessarily because of the assumption that such claims can be assessed by using the same universal standards but from the idea that such assessments can be made only through a critical framework giving primacy to local interpretations. But who gives voice to these claims is negotiated around the way terms like heritage or cultural property become identified with a highly reduced language of indigenous rights.

Legal Fictions and Cultural Property

Since much of the experience of indigenous rights is derived from debates in conservation, in particular the rapid globalization of disputes around rainforest conservation over the last fifteen years, it is worth drawing upon some of the general issues these cases raise. Up to now the debate has been dominated by northern environmentalist interests, agencies of donor governments, and international financial institutions such as the World Bank. As research is carried out on the bureaucratic operations underlying the environmentalist discourse, it has been increasingly recognized that debate is dominated by a short-term language that facilitates rapid decision-making. Ferguson, in an influential study of such organizational logics, has argued that "the thoughts and actions of 'development' bureaucrats are powerfully shaped by the world of acceptable statements and utterances within which they live" (1994: 18). Burnham, writing on forest conservation in Cameroon, describes how by managing to define their interventions in narrow technicist terms, external agencies are able to speed project approvals, strengthen confidence in achieving definable goals, and argue for budget increments (Burnham 2000). Contributing to this simplification of complex realities is the deployment of a language of cultural rights as a means of justifying the attachment of resources to local communities, particularly if defined as indigenous, because they are thought to have special knowledge or skills in managing the environment. He describes how within development and conservation policy discourses, certain "key terms" like "community," "indigenous peoples," "common property," "sustainable management," and "biodiversity" become associated with securing a coherent sense of policy and obscuring areas of fundamental contradiction (Burnham 2000).

Such tendencies toward simplification and reductionism are well known to anthropologists familiar with colonial administrations. The 1990s saw a revival of many of these criticisms, as powerful institutions such as the World Bank espouse neoliberal and neo-Malthusian policies to favor privatization of land and forest-resource tenure. This has encouraged a trend towards the creation of a "common property" constituency that would argue for "traditional" rights in common property as an effective way of managing natural resources at the local level, by encouraging people to agitate for the defense of their local resources. At the same time, this has been accompanied by attacks on state ownership of land and a general aversion to the role of the state as harbinger of corruption and bureaucratization inimical to an entrepreneurial spirit. In West Africa, for example, where a British colonial administration recognized customary land law through setting up native authorities, this has promoted strong local incentives for the revival of "traditional claims," with the additional tendencies for "customary law" to freeze history and create fictions of what constitutes a traditional community, based on the unrealistic expectations of an earlier generation of functionalist ethnographers about what constituted a tribal community. By contrast, in formerly French colonies, where the colonial administrations refused to recognize traditional land-tenure systems and instead adopted the role of "guardian of all the lands" (i.e., that at colonial contact land in Africa was vacant and without possession), there remains an incentive to ignore both "traditional" and current local land-tenure systems and to impose supra-local legal contracts as the only way to deal with intractable conflicts. In consequence, much of the painstaking ethnography on land tenure and indigenous concepts of ownership is blithely ignored.

Into this broadly drawn situation, a discourse on cultural rights and property has recently been introduced through the activities of external donors and other institutions, to justify devolutionary policies and the empowerment of local communities. In Cameroon, for instance, the emphasis on "traditional communities," or the use of language such as "participatory forest management" as a means of establishing local sustainable management of forests espoused by expatriate donors, bears little relation to how such "communities" are constituted and defined in practice (cf. Burnham 2000). However, in many cases this doesn't seem to matter and there is a quite explicit sense that if "communities" do not exist now, they will in the near future and it will be the job of suitable development-oriented NGOs to create them. So if history repeats itself, it does so through the use of a more charged language

drawn from the right of a group to exist and to hold cultural property in common. In Cameroon, for example, since the 1994 Forestry law, community forest projects can be established based on claiming access to manage and exploit forests within the immediate vicinity of a local community. A community project proposal has to be made to the government, which inevitably means that either an NGO or a local elite association will act as the broker. They have to demonstrate that "traditional" rights pertain through use to a particular tract of forest and that a traditional structure exists in order to manage it as a resource (cf. Povinelli's chapter 8).

Probably the most widely used justification for the recognition of a community in these circumstances is the notion of "indigenous peoples." Principle 22 of the Rio Declaration on Environment and Development asserts, "Indigenous people and their communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interest and enable their effective participation in the achievement of sustainable development." According to this view, indigenous forest peoples live in harmony with the rainforest, causing little long-term damage because of simple subsistence technologies and low population densities. Defining indigenous usually means identifying people by their long-term residence and common ancestry, common language and culture, a first-comer status, and a minority relationship to the state. They are also said to have indigenous knowledge of the rainforest both as a potential economic resource and for harboring skills in sustaining a manageable environment. The World Bank has been particularly active in incorporating "indigenous peoples" into its development policies. A 1982 "Tribal Peoples Operational Directive" was superseded in 1991 by an "Operational Directive 4.20 on Indigenous Peoples." A key feature of this directive was to press for the identification of local indigenous peoples and their informed participation through direct consultation in the development process. The use of terms such as indigenism and participatory development has become synonymous with the ability of development agencies to operate at a truly grassroots level. It can be safely said that most of these initiatives have not met with any great enthusiasm. In Africa and India, this is due to the rejection of the notion of "indigenous peoples," on the basis that it is a concept relevant only to states with a history of dominant white-settler colonialism. If all African peoples are indigenous, it is difficult to define "the right to belong" on the basis of origin, since such a claim will always be

politicized and used situationally to claim resources. By linking rights of community to cultural and natural heritage as a Latour type of hybrid identity, participation in the development process becomes a matter of social exclusion rather than of democratic principle, and the promotion of indigenous rights can lay the basis for a "politics of belonging" (Nyamnjoh and Rowlands 1998).

A rhetoric of indigenes versus strangers has become a prevalent feature of politics in Cameroon, where the attachment of political conditionalities to development encouraged multipartyism in the early 1990s (Geschiere and Nyamnjoh 2000). To be indigenous in Cameroon in the twenty-first century means to claim primary origin, to vote by ethnic origin, to assert rights according to heritage and residence, and to exclude others as later migrants (regardless of the fact that recent history of many such areas shows complex patterns of population movement that would make it practically impossible to define any one pristine group). Instead, the past can be ransacked for suitable evidences of local origins or of lost cultural traits that would justify indigenous claims. While this naturalizing of identity removes the question of responsibility from the realm of political discourse, access to whatever resources might be available changes from a responsibility of state allocation to a right of recognition, which becomes more or less synonymous with co-residence within an ethnic homeland.

Transmission of Grievance

While a rights discourse can be deployed for strategic purposes, its attachment to heritage and cultural property can also imply, at least in one sense of injustice, grievance about some past hurt or trauma that has been inadequately transmitted and recognized. Repatriation claims on cultural property are instances where grief over loss transmits into a grievance due to lack of recognition. Mourning is transmitted to living descendants as grievance, well beyond the immediate victims who suffered loss. Instances of politically radicalized transmission of grievance over long periods of time, such as those of Palestinian refugees or the descendants of Holocaust survivors, have led to developing ways to encourage survivors to deal with loss, e.g., ranging from constructing memory-books to human-rights lawyers pressing for state-level apologies and compensation. Acknowledging grievance has become therefore a generalized feature and demand of much recent human and cultural-rights legislation; it is perhaps most sensitive to the recognition that the forms grievance takes differ within a range of modern situations (cf. Feuchtwang's [2000, 2003] seminal work on this).

Blame, vengeance, compensation, or an apology are all possible ways of satisfying the need for recognition; empirically, this is clearly the right focus for many studies concerned with examining forms and reconciliation of grievance. Which, if any, of these options is likely to be chosen, however, does seem to depend on the nature of the original sense of loss and divestment. As Feuchtwang (2003) has observed, grief becomes grievance through the idealization of loss, when the original sense cannot be resolved through adequate mourning and where the conditions do not exist to help people forget. Monuments, for instance, are in one sense responses to the demand for recognition of loss, an attempt by the nation or other group to prevent grief from turning into grievance by giving adequate and continuous recognition of loss and, at the same time, intermittent periods of forgetting and being able to get on with one's life. The cultural transmission of loss is essentially, therefore, a collective endeavour, whether based on constructive forgetting or on the transmission of grievance; both tend to be objectified in monuments or sites of the original loss and in objects and images that revive and convey to others the emotional pang of loss and grievance (Rowlands 1999).

Freud saw the work of mourning as recalling a lost object, and when feelings are most acute and unresolved, idealizing the object can be accompanied by self-denigration. Feelings ranging from paranoid anxiety to acute idealization of lost objects can therefore accompany fantasies of being attacked, rejected, or humiliated and are lived as real experiences – as things, not words. It is not surprising therefore that the energies of grievance should be externalized in the recovery of lost objects as a way of retelling past events, of collecting and transmitting grievance, and thereby of seeking some sense of completeness and final resolution in a court of recognition. Graves, ancestral cults, memorials, archives, and museums are all potential sites for doing this, associated as they are with the essential process of turning bad into good deaths.

Several authors have remarked (e.g., Gellner 1983; Nora 1989) that nations are recognizably self-conscious in their appropriation of myths of origins and in commemorating sites of collective memory. The documentation of national loss and grievance includes not only archives and documentation but, in recent cases of mass killing, the techniques of forensic science, forensic archaeology, and museum curation in order to induce dramas of recognition and grievance. Renan made his famous remark that history was for the nationalist as poppies were for the opium addict in order to allude to this propensity for the state and the nation to be in contradiction over the adequate

foundation. Any "enquiry" brings to light deeds of violence which took place at the origin of all political formations, even of those whose consequences have been altogether beneficial. Unity is always effected by means of brutality (Thom transl. of Renan 1990: 11). It is also often the case that states formed through the violence of conquest and massacre will insist on repressing such representations of the national past. The expulsion of minorities or indigenous peoples, of religious and linguistic minorities, is such a feature of the modern state built on collective violence that the encouragement of selective remembering, the mutuality of silence, and the exclusion of minority voices is constitutive of the foundation myth. From town planning, or modes of hygiene and public welfare, to heritage tourism and biographical writing, immense efforts are made to secure a certain admission of the past within an overall strategy of looking to the future as a positive outcome of a collective unity.

It is not surprising therefore that a feature of minority indigenous movements has been espousal of cultural rights to revive the past and relocate a sense of grievance within a personalized sense of recovery from hatred and rage. The modern state has by and large run out of options for silencing the revitalization of the past and, in order to keep the peace, has had to turn to or be coerced to turn to alternative forms of authority. Hence, state encouragement of Aboriginal art as an authentic cross-cultural product, or representing the authentic in architecture and town planning, in heritage, and in re-planned museums helps to forge new traditions and to apologize somehow for the past. The tendency for this to freeze the past; to institutionalize an original sense of creativity which was otherwise variable and dynamic, has been a source of both complaint and recognition, e.g., in the right to convert an original creation into an object for sale, which has been both empowering and enriching for many indigenous peoples and an unwelcome sign of commodification. But it has opened up the divide between original "ownership" as part of a universalized notion of cultural property, which tends to simplify and preserve culture as a static entity, alongside the relationships embedded in culture, which must be protected and retained as fluid and creative. It is this revitalizing of "local culture" in the face of forces of reification and commodification that it seems is opening up a silenced world of grief/grievance formerly kept under control.

The return and reburial of human remains deposited in their hundred of thousands in Museums and Anatomy departments all over the world, often in the aftermath of past acts of genocide, exemplifies the growing

recognition in cultural rights legislation of the moral and ethical ties that bind. In the majority of cases where human remains are of recent (often nineteenth-century) origin, the argument for the removal of such remains from display in Museums and/or their return to original communities for reburial has been widely accepted. But the event which suggests that there may be limits to the moral case was the discovery in 1996 of a more or less complete skeleton known as "Kennewick Man" in Washington State, which is thought to be 8,400 years old, the oldest remains yet found in the Americas. The remains have subsequently been claimed under the NAGPRA legislation by four Native American groups, evoking a rebuttal by archaeologists wanting to study them. The Hastings amendment, new legislation that has been enacted, would require establishing evidence of the cultural origins of remains before allowing their repatriation. The case is still unresolved, but a striking feature is the degree of ill feeling generated, with accusations of racism and careerism made against archaeologists belonging to the American Committee for the Preservation of Archaeological Collections. A sense of grievance among impoverished minorities may be displaced into many aspects of contemporary injustice, but what is unusual is that resolution is achieved not through anti-racist legislation or better welfare but through insistence on the return of bones for reburial. Popular cults that commemorate the dead revitalize the past through a form of re-telling or revision, so that their grievance and those of living descendants can be assuaged. The restitution of cultural property can, I suggest, be interpreted as a form of revitalization cult, which attempts to assuage grief that became grievance through the belief that the other afflictions of being indigenous in pluralistic settings (alcoholism, high infant-mortality rates, prostitution, and poverty) may finally be resolved by according the remains of ancestors "a good death."

While resolving the transmission of grievance can obviously take many forms, what these cases share is that recognition of injustice should lead to retrieval of dignity and respect. In turn, this affects notions of possession and in particular of cultural property. Legal ownership is not in doubt in any of the cases mentioned, but everyone involved is, broadly speaking, concerned to put this aside – to operate on a liberal consensual base that moral ownership should be the principal issue. But moral ownership is here based on a principle of priority, i.e., that the creative property of having originated a cultural product transcends any later claim based on legality. That, in turn, raises the question that priority is claimed as a higher *value*, which along with economic notions can also be seen to be a product of moral virtue and

the right to belong. The tendency for bodies like UNESCO to assert moral ownership as a higher value than legal ownership is therefore consistent with the recognition that the value of humanity itself is at stake and, in these circumstances, the needs of science or the market should take second place.

Heritage, Politics, and Memory

The demand for recognition has been made more explicit recently because it has been accompanied by the self-knowledge that we are formed by it. In Charles Taylor's terms, "Due recognition is not just a courtesy we owe people. It is a vital human need" (26). What has emerged, he would argue, as the key need is the recognition of cultural difference and the struggles of subjugated peoples against homogenization. But this is closely linked to western notions of authenticity that involve concepts of creativity, fundamentally at variance with such a discussion. Moreover, recognizing the unique identity of this individual or that group rests on the assumption that their distinctiveness has been suppressed or submerged in the past. The sin committed by assimilation policies is the assault it mounts on authenticity. As seen in the case of indigenism, a politics of difference can be full of denunciations and discrimination against others, which are hard to accept as justified simply on the basis of asserting the right for a traditional way of life or to preserve unique identities against external influences. Much of this could be seen as consistent anyway with a neoliberal "strong discourse" that not only constructs cultural difference as respect for the dignity of others but also orients alternate identities as options consistent with a form of governmentality that encourages choice. UNESCO, for instance, in the 1970 convention, defines cultural property as "an essential element in the personality of the peoples of the world, diminishment of which seriously undermines their right to a distinct way of life. People have rights to cultural property consistent with the need to gain a consciousness of their cultural creativity and therefore of their own dignity" (UNESCO 1970). In addition to this recognition of cultural choice, UNESCO from early on was concerned not to imply some cultural imperializing world order and to recognize that each state has the right to define cultural property consistent with what guarantees the preservation of its own creativity. Japanese legislation, taken as a model by other South East Asian states, includes tangible and intangible cultural properties, folk culture, and monuments. The UNESCO inter-governmental committee for the recognition of cultural property

defined it as anything that could be said to be "highly charged with cultural significance" for a particular member state. Implicit is the contradiction between the universalist notion of the right to protect anything as world heritage that sustains human dignity and the rights of individual states to define their own cultural property consistent with their own needs. The individualizing of authenticity as something to be revealed in the personality writ large has therefore been disseminated as a universal right that must at the same time be accredited with local manifestations. The uneasy balance between these two individualizing tendencies can be seen in many cases where "authentic culture," implying culture as possession, something one can have more or less of and in particular which may be under threat through histories of migration and ethnic pluralism, is being reasserted as a right to be recognized and enforced through control and safeguards of cultural property.

My purpose has been to point out that a politics of recognition has now dissolved the difference between a sense of authentic, local, dynamic process of creativity and worries about loss of culture, as a reified property or possession that is under external threat. We can no longer see the latter as a figment of nineteenth-century imaginary, or of the outmoded paradigm of international agencies and cultural institutions prone to defend cultural identities against the individualizing forces of the market. Academic paradigms can be accused of lacking a sense of the public sphere in which policy is formed and of rather blithely disregarding such issues as outmoded or naive. Yet the right-recognition-cultural-property nexus embedded in neoliberal discourse is enormously influential and widely seen as the current basis for an important sphere of public policy. At one level, the contrast between rainforest conservation, indigeneity, and the transmission of grievance could not be greater, but at another more abstract level, these shade into each other as part of the struggle for existence in the twenty-first century.

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References

- Brown, Michael. 1998. "Can culture be copyrighted?" *Current Anthropology* 39: 193-222.

- Burnham, Philip. 2000. "Whose forest, whose myth?" In *Land, law and environment: Mythical land, legal boundaries*. Edited by Alan Abramson and Dmitri Theodossopoulos. London: Pluto.
- Carrier, James. 1997. *Meanings of the market: The free market in western culture*. Oxford: Berg.
- Ferguson, James. 1994. *The anti-politics machine*. Minneapolis: University of Minnesota Press.
- Feuchtwang, Stephan. 2000. "Reinscriptions: Commemoration, restoration and the Interpersonal transmission of histories and memories." In *Memory and methodology*. Edited by Susannah Radstone. Oxford: Berg.
- Feuchtwang, Stephan. 2003. "The transmission of loss and the demand for recognition." In *Regimes of Memory*. Edited by Katie Hodgkin and Susannah Radstone. London: Routledge.
- Fraser, Nancy. 1995. "From redistribution to recognition? Dilemmas of justice in a 'post-socialist' age." *New Left Review* 212: 68–93.
- Gell, Alfred. 1992. "Inter-tribal commodity barter and reproductive gift-exchange in old Melanesia." In *Barter, exchange and value*. Edited by C. Humphrey and S. Hugh-Jones. Cambridge: Cambridge University Press.
- Gellner, Ernest. 1983. *Nations and nationalism*. Cambridge: Cambridge University Press.
- Geschiere, P., and F. Nyamnjoh. 2000. "Capitalism and autochthony: the seesaw of mobility and belonging." *Public Culture* 12: 423–52.
- Godelier, Maurice. 1999. *The enigma of the gift*. Cambridge: Polity.
- Gosden, Chris, and Yvonne Marshall. 1999. "The cultural biography of objects." *World Archaeology* 31: 169–78.
- Handler, Richard. 1988. *Nationalism and the politics of culture in Quebec*. Madison: University of Wisconsin Press.
- Harrison, Simon. 2000. "From prestige goods to legacies: Property and the objectification of culture in Melanesia." *Comparative Studies in Society and History* 42: 662–79.
- Holtorf, Cornelius. 2001. "Is the past a non-renewable resource?" In *Destruction and conservation of cultural property*. Edited by Robert Layton, Peter Stone, and Julian Thomas. London: Routledge.
- Kopytoff, Igor. 1986. "The cultural biography of things." In *The social life of things*. Edited by Arjun Appadurai. Cambridge: Cambridge University press.
- Lambek, Michael. 1998. "The past imperfect: remembering as a moral practice." In *Tease past: Cultural essays in trauma and memory*. Edited by P. Antze and M. Lambek. London: Routledge.

- Layton, Robert, Peter Stone, and Julian Thomas (eds.). 2001. *Destruction and conservation of cultural property*. London: Routledge.
- Linnekin, J. 1990. "The politics of culture in the Pacific." In *Cultural identity in the Pacific*. Edited by J. Linnekin and L. Poyer. Honolulu: University of Hawaii Press.
- Lowenthal, David. 1998. *The heritage crusade and the spoils of history*. Cambridge: Cambridge University Press.
- Maine, Henry Sumner. 1986 [1963]. *Ancient law*. Tucson: University of Arizona Press.
- Nyamnjoh, F., and M. Rowlands. 1998. "Elite associations and the politics of belonging in Cameroon." *Africa* 68: 321–37.
- Niec, Halina (ed.). 1998. *Cultural rights and wrongs*. Paris: UNESCO.
- Nora, Pierre. 1989. "Between memory and history." *Representations* 26: 7–25.
- Posey, Darrell. 1998. "Can cultural rights protect traditional cultural knowledge and biodiversity?" In *Cultural rights and wrongs*. Edited by Halina Niec. Paris: UNESCO.
- Povinelli, Elizabeth. 2001. "Radical worlds: The anthropology of incommensurability and inconceivability." In *Annual Review of Anthropology* 30: 319–35.
- Prott, Lyndel. 1998. "Understanding one another on cultural rights." In *Cultural rights and wrongs*. Edited by Halina Niec. Paris: UNESCO.
- Renan, Ernest. 1990. "What is a nation?" In *Nation and narration*. Edited by Homi K. Bhabha. London: Routledge.
- Rowlands, Michael. 1999. "Remembering to forget: Sublimation as sacrifice in war memorials." In *The art of forgetting*. Edited by Adrian Forty and Susanne Kuechler. Oxford: Berg.
- Schmidt, Peter. 1995. *Plundering Africa's past*. Bloomington: Indiana University Press.
- Spivak, Givraty. 1999. *A critique of postcolonial reason*. Cambridge: Harvard University Press.
- Stolcke, Verena. 1995. "Talking culture: New boundaries, new rhetorics of exclusion in Europe." *Current Anthropology* 36: 1–24.
- Strathern, Marilyn. 1988. *The gender of the gift*. Cambridge: Cambridge University Press.
- . 1996. "Potential property: Intellectual rights and property in persons." *Social Anthropology* 4: 17–32.
- Taylor, Charles. 1994. "The politics of recognition." In *Multiculturalism: Examining the politics of recognition*. Edited by Amy Gutman. Princeton: Princeton University Press.

- Thomas, Nicholas. 1991. *Entangled objects*. Cambridge, MA: Harvard University Press.
- Weiner, Annette. 1992. *Inalienable possessions*. Berkeley: University of California Press.
- Weiner, James. 1999. "Culture in a sealed envelope." *Journal of the Royal Anthropological Institute* 5: 193–210.
- Wharton, Glenn. 2002. "Can conservation respond to indigenous demands?" *Public Archaeology* 3: 24–35.

t e n

The Menace of Hawkers: Property Forms and the Politics of Market Liberalization in Mumbai

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"Why do you people keep coming into the city? Why do you clog the streets and harass people?" The questions were directed at Sandeep Yeole, secretary of the Ghatkopar (West) *Pheriwala* committee. A former *pheriwala*, or street vendor, himself, Sandeep was now an activist organizing street vendors in his locality in Mumbai. That morning he was concluding a presentation to a group of city professionals on the problems facing *pheriwalas*. He answered with another question: "If I had a *crore* of rupees [ten million rupees] and were to come into the city, I would be welcomed with open arms. I would be offered my choice of bungalows to buy. Why is it that the *pheriwala*, who struggles to survive and works hard for his living, is rejected?"¹ Sandeep put his finger on a point of discrimination. His interlocutors saw hawkers as an assault on the public, implicitly construed as people like themselves. But an illiberal property qualification united their community of interests: only the well-to-do were assured entry. Sandeep was using a master-key to the doors of their imagination, bypassing their objections to *pheriwalas*. Who today would object to a *crorepati* (someone with a crore or more of rupees) after all? The truth is that, in the spate of demolition raids launched on street vendors, even the rich ones with armies of municipal officials in their pay are not spared. "The menace of hawkers" described in the dailies is not the menace of their poverty; it is that they exist at all. That is, they become a mirror for all kinds of doubts and ills attending the transition from state-led development to market liberalization.