

Ways of Owning and Sharing Cultural Property¹

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Introduction

The knowledge that gives meaning to practices, objects and land is often specific to, or associated with, particular groups. Transmitted across generations, it is regarded in many societies as cultural heritage to which members can assert privileged claims. Such knowledge is often displayed and transferred as cultural property through symbols, as a means of communicating social networks and for securing a ceremonial dialogue with the supernatural. As a shared cultural tradition, it is essential for the identity of the group. Depending on the context, cultural property can also be instrumentalized in a multitude of ways. Today it is often promoted or even invented as a way of legitimizing Native claims to territories or other resources. A cultural tradition can be turned into an economic resource or a commodity.

Property relations are best viewed as social relations between people with regard to some object (Hann 1998, 4). This approach can be further expanded to include relations between persons and the supernatural, since these are often a prominent feature of Native² world views. The kinds of properties to be focused upon here fall into the category that Weiner (1992), in her critique of Lévi-Strauss's and Mauss's overly generalist and positivist views of reciprocity and exchange, has called "inalienable possessions." For Weiner, the possibility to withhold certain goods from circles of exchange and to manipulate these circles works against the erosion of collective identities and can be a demonstration of power. While Weiner tends to concentrate on material objects, Harrison (1999, 240) expands the concept of inalienable possessions to include symbolic practices, which need to be protected from unauthorized copying, reproduction, or "piracy." Such intangible property requires more complicated strategies for its protection. While tangible property is relatively easy to deal with in the sense that objects can only be in one place at one time, knowledge and ideas are continuously in flux over space and time.

What does it mean in the twenty-first century to speak of a cultural tradition? How far can such traditions, or parts of them, be interpreted as the exclusive property of certain individuals or collectivities, and when must they be seen as the cultural heritage of humankind? Can flexible concepts of ownership better reflect the multiple origins of a cultural tradition and shared responsibilities in maintaining it? These are the basic issues to be addressed in this introductory essay.

Are western concepts of intellectual property rights appropriate to Native contexts?

Accelerating globalization, and in particular new information technologies, confront us almost daily with contested appropriations of intellectual property. Traditional knowledge can sometimes be protected by means of western intellectual property law, e.g. when Native people are allocated a share of the profits that foreign companies earn in its application. Native environmental knowledge used by the pharmaceutical industry is one highly complicated example (see Leistner 2003; Brown 2003, 95–143). However, even in the western world intellectual property (defined by trademarks, patents and copyrights) remains full of ambiguities. On the one hand, the result of intellectual labor and time invested has to be acknowledged and rewarded; on the other hand, the free flow and use of ideas is essential for human creativity and further innovation. Almost every product of intellectual labor or invention builds upon the ideas or creations of predecessors, making it difficult to define the extent of the originality of a particular individual or team (for a discussion of such chains of innovations from a lawyer's point of view, see von Lewinski, *this volume*).

The application of western intellectual property concepts and laws based upon them can be even more problematic in Native societies. At first glance one sees obvious similarities to intellectual-property-right-like practices. Stories, songs, myths, dances and ritual practices are often understood as the property of individuals or collectivities, in the sense that they have exclusive rights to use and to transfer them. Upon closer examination, however, fundamental differences are evident. First, concepts of time are quite different in traditional Native contexts. As I have found during my work among the Kwakwaka'wakw, one of the First Nations of the Canadian Pacific Northwest, and among Itel'men, Even and Koryak groups in Kamchatka, the prime obligation is to one's ancestors and/or the supernatural, to protect heritage on behalf of future generations. The historical embeddedness of cultural property concepts in such societies runs counter to western principles of copyright law, which normally expires after a certain period of time. In the view of Native people, especially the elders, the proper transfer of sacred knowledge from one generation to the next is jeopardized if its meaning is changed through commodification, or if it is not presented and transferred in appropriate ways.³ However, not all community members necessarily share this belief in every instance. In rapidly transforming social settings, the interpretation and usage of cultural heritage can become highly differentiated, intergenerational conflict being one common outcome.

Second, and perhaps even more significantly, Native intellectual property rights are seldom spelled out contractually in writing. Embedded in oral traditions, they tend to be flexible and renegotiable; and this helps to explain why cross-cultural misunderstandings arise when western models of property rights are imposed on Native societies and vice versa. Let me explore this point further in the light of some examples.

The Kwakwaka'wakw of the Canadian Pacific Northwest are famous for their political system of elaborate ceremonies, notably the potlatch, which even nowadays continue to provide a public arena in which social relations, status, and property claims to hunting, fishing and gathering grounds are demonstrated and continuously renegotiated (Kasten 1996, 314–6). This is accomplished in a symbolic discourse by the use of songs, dances and the demonstration of important relationships with the supernatural, represented through masks and other regalia. These performances and objects constitute a unique relationship with a supernatural being, which is believed to have transformed itself into a human at a particular location in ancestral time.



Kawadelekala
Transformation myth
Frances Dick, 1986
(see Kasten 1990, 18–20)

The ceremony legitimizes the present-day claim of a specific (family) group to that territory. Alternatively, it is possible for an individual to maintain a special relationship with a supernatural being that resides on

the bottom of the sea and is believed to control the annual fishruns. The point is that the economic well-being of individuals and groups is connected to the relationships that each and everyone maintains not only to family and community members (and to trading partners in the case of commodified exchange) but to the supernatural as well. The latter relationships, represented symbolically in songs, dances and objects, are understood to be “owned” by these individuals or groups. They can be individually owned, for example, in the form of personal spirit helpers acquired through individual spirit quests (more common to groups in the interior of the region). Indispensable relationships to the supernatural can also be established through collective initiation rites (for example, into secret societies, a practice more prominent on the coast). Both forms of ownership vary from group to group and they are by no means mutually exclusive.

Ownership claims are matters of intense public concern and scrutiny. For example, if a dancer uses a mask or a symbol that closely resembles that of another performer, this would usually be seen as a violation of Native property law. He or she would only risk such a violation after finding out (by discreet advance inquiries or else during a preliminary “potlatch conference”) that public opinion would approve, or at least would not indict the perpetrator for this transgression.

One of the most striking features of these symbolically communicated property relations is the conscious maintenance of their flexibility. Anything that would “freeze” such an open discourse, for example the recording of a sequence of events on film or video, is avoided or explicitly prohibited. This helps us to understand why in many Native societies written agreements are not considered as binding as they tend to be in most western societies where such forms are more deeply rooted historically. Such fixed forms are as alien to those societies and their cultural tradition as the flexibility and renegotiability of Native agreements are to contemporary western societies. How, then, can these two different systems of property relations interact? Native leaders need to develop an ability to negotiate the divides, between state and customary law, but the solutions they put forward may alienate them from grass-roots opinion within their groups. Moreover, as we shall see, there are often as many customary laws as there are differing interpretations of a group’s cultural heritage.

Extending the meanings of traditional property concepts

Most Native people increasingly *live* multiple identities, and many of them reflect on and interpret their identities selectively. They may, for example, promote a local cultural tradition as indispensable or claim the use of it as

an exclusive right whenever this appears opportune. The commodification of culture and its political instrumentalization for Native political claims are both key aspects of contemporary cultural property debates. However bizarre the claims might sometimes appear, we should avoid hasty or unfair judgements and generalizations. How individuals interpret their cultural heritage varies extensively and continuously, just as culture itself varies across time and space. Barth (2002) has recently reminded us that there is no one-to-one identity between an idea and its manifestation, between cultural construction and event.

Examples of how the same cultural event can be differently interpreted, depending on the varying interests of the participants, are readily available in most of the revitalized or reconstructed ethnic festivals among Native communities in the Russian North. One of these is the annual *Alkhalalalai*-feast among the Itel'men of the west coast of Kamchatka. In some dances the elders, imitating animals vocally and in body movements, express an intimate relationship to the supernatural analogous to that described above for the Northwest coast dances. These dances may follow the performance by a professional Itel'men ensemble of a staged shaman ceremony, reconstructed from the 250-year-old accounts of Georg Wilhelm Steller and imbued with his Protestant-pietistic interpretation of such ritual actions. Such reconstructed symbolic practices are not only presented to foreign guests: they are recognized within the group as proper cultural tradition of the Itel'men people, performances that they do not like to see copied by others.

Even more revealing are the speeches that mark the end of the festivals, which are similar in style and content to those made at First Nations potlaches in Canada. Participants representing various parts of the community comment upon and interpret the preceding event. Representatives of Native organizations link the promotion of Native identity in various ways to current political agendas, e.g. by asserting claims to self-government, territory, and access to resources. Local enterprises, which sponsor prizes and gifts in the form of household goods or less utilitarian items, display their support for Native traditions with paternalistic attitudes that are in effect new forms of pre-Soviet patron-client relationships. Finally, the representatives of various levels of district and regional administrations and governments also maintain the Soviet tradition of incorporating Native heritage into the political propaganda of the state. Their speeches evoke memories of now-defunct institutions such as the so-called "agitation-culture-brigades," which used to tour remote villages and reindeer-herder camps, wrapping the Soviet message in performances of local cultural traditions and identities.

It is difficult, under such complex political conditions, for Native leaders to have their message taken seriously. In 1997 there was an obvious conflict of interest: an Itel'men leader opposed sending the Itel'men ensemble *El'vel'* to join in the all-Russian ethnic festival in Moscow, to celebrate the joining of Kamchatka to the Russian Empire 300 years ago. This leader, who is notorious throughout Kamchatka for his vigorous promotion of Native self-government, turned down requests from the ensemble to go to Moscow to celebrate an event that "led to the colonization of his people," as he repeatedly called it. Naturally, the ensemble wanted to attend the Moscow festival, as this meant not only prestige but also a source of income. The leader's rejection only resulted in an ensemble from another Kamchatkan ethnic group jumping on the plane in place of the Itel'men. This incident illustrates the conflicts of interest (in this case leading to an eventual clash) that may arise when a cultural tradition is politically instrumentalized in a situation of shifting political alliances.

Another example of how cultural property may be interpreted differently by various agents (all of them claiming to own and use the same tradition for their particular aims) is given by Barbara Isaac (2000) in her summary of the experiences the Peabody museum has had with NAGPRA, the Native American Grave Protection and Repatriation Act of 1990. After the museum had repatriated the remains of over 2000 people to a Native pueblo community in New Mexico, a reburial ceremony was held there. The general reaction on the grass roots level was of deeply felt satisfaction of a personal, spiritual need. The same event was appropriated by representatives of various pan-Indian organizations in their political rhetoric. They termed the event a "political victory," seeing in it "cultural and political recognition for Native Americans, which mirrors the efforts of indigenous people world-wide."

Beyond such political instrumentalization, the concept of cultural property is also called into question by the commodification or the commercial use of a cultural tradition or parts thereof. I have already mentioned the potential conflicts and disruptive effects for Native communities when commodification blurs distinctions between the sacred and the profane, although such commodified exchange is not, of course, a recent phenomenon. Problems may arise if authorship is differently interpreted by individuals, some of whom emphasize traditions while other adopt positions closer to western ways. I witnessed such conflict during the recording sessions for one of my CD-productions (Kasten and Dürr 1999). Traditionally oriented performers were always eager to point out from whom they had learned a particular song and they insisted that an acknowledgement be included in the commentary. In contrast, modern professional dance

ensembles did not always follow that etiquette. In one case, a melody was re-arranged for synthesizer by a professional Even dance ensemble, and the “composer” was given full attribution. In the course of later research it became clear that this song and dance was based on a family melody from a north-eastern coastal Koryak group.

Yet in some cases western-style copyright does make sense. David Koester (Levkovsky and Koester 1998) has been involved in a valuable project to assist a Native Itel'men composer to publish his songs in the form of a book of music. At the outset of the project, the artist noted that his compositions were being played all over Kamchatka without people knowing that they were his. These compositions were not based on particular family melodies, but employed Native and non-Native lyrics and melodies composed following the melodic and harmonic potential of the Russian accordion. In juxtaposing these cases, it might seem easy enough to draw a sharp line between outright “piracy” and the truly creative work of an artist, but in reality this line is often fuzzy.

Rigid legal norms and authorizing a specific ethnic group to use a particular tradition as its exclusive property are questionable for other reasons. Just as any intellectual work builds upon the knowledge and ideas of others, so the origins of Native art and handicraft traditions can almost never be traced to a single Native group. On the contrary, Native arts and crafts have typically flourished when stimulated by new materials, techniques and ideas. A well-known example is the Navajo rug described by Brown (2004). In the Spanish colonial period Europeans introduced sheep to the American southwest, without whose wool these rugs could not be woven. Anglo-American traders later provided basic designs and color schemes. According to Brown (2004, 59), “Navajo weaving is the product of a cultural conjunction: mercantile and aesthetic, European and indigenous.” Contrary to assertions that such traditions are the exclusive cultural property of a single group, most arts and handicraft forms are part of a shared heritage and a common historical experience.

In a similar way, Native art traditions such as Chukchi and Yup'ik ivory carving, Saami reindeer horn art or Northwest Coast Indian wooden art deserve protection against plagiarism and copying by outsiders. These works are important sources of income for Native people, especially in the remote communities of the Russian Far East that find themselves today on the edge of economic collapse. But even here, with regard to ivory carving, there is the added complication of the “borrowing” of themes and images across the Bering Strait among Native groups. The question is how to allow this sharing of ideas among artists, while restricting borrowing by makers of tourist art (David Koester, *personal communication*). Native art

production stimulates the younger generation to engage with traditional cultural motifs and ideas and thereby facilitates the survival of cultural traditions, albeit in new forms. This implies that flexible ways must be found to help make Native artists competitive on global markets. How one qualifies oneself as a *Native* artist can be problematic, however. It seems that a growing number of artists live away from their communities and use a self-declared ethnic affiliation as a business tool, without taking responsibility for those communities. The community, eleven time zones away in some cases, has no means to control how these individuals represent them.

The quest for authenticity

The claim to personal or collective ownership of a particular tradition and of the specific cultural knowledge behind it must be validated or at least substantiated in some way. In some Native societies, clear rules governing the transmission of such property are still in place and followed. In others, however, the question of who qualifies as the legitimate bearer of a particular tradition, and who is entitled to draw political benefits and economic profits from it, has become increasingly contested in recent years. Local communities, such as those in Kamchatka, are usually multi-ethnic in their composition, and not only as a result of the increasing inflow of Russians, Ukrainians and other newcomers (*priezshbie*). Even before Soviet times, multilingual and multicultural settings had become common in Kamchatka, in which a variety of Native groups were interacting and sharing knowledge. These interethnic relations became even more pronounced when artificially restructured during resettlement programs in the 1960s. In recent decades, increasingly hybrid cultural forms have developed, shaped by Native peoples themselves. These complexities make it difficult today to specify precisely and definitively what is Native and what is not. More importantly, any such attempt would fail to take into account the creative and dynamic ways in which local Native communities have always incorporated cultural elements from neighboring groups: local styles have always been in flux and never static.

In contrast, a concept of *bounded* culture is implied when a staged dance performance is seen as authentic because “each of his [Yetneur’s] dance pieces was readily identified with a particular dance style of a culture: Chauwchu, Karaga Nymylan Koryaks, Penzhina Evens, Siberian Eskimo, Itel’men” or when they are “representative” of a certain village (King, *this volume*). However, these stereotypes do not reflect the actual hybridity and creativity which result from the “fuzziness” of ethnic boundaries in local contexts. Not only each ethnic group, but each village has its set of particular (sub-) styles, which vary continuously even among family members

from feast to feast (Kasten 2003; see in particular the shown variation of family songs between mother and daughter, and of seal dances between sisters and brothers).

Stereotyped “ethnic” styles and motifs in some staged dances, as mentioned above, usually do not reflect the more complex identities performed at local feasts. Here another genre of dances plays a prominent role, which mimics the encounter with the *other* in the form of joking discourse. The joy of the Iteĺmen over imitating (and so incorporating) otherness was noted already 250 years ago by Stepan P. Krasheninnikov (1972, 262) and Georg Wilhelm Steller (1996, 233-4), when the subjects of these early ethnographers amused themselves in their songs about the curiosity of the young “students.” This tradition of mimicking others is obviously still alive among contemporary Iteĺmen: At their Alkhalalalai-feast in 1997, one joking performance depicted an ethnolinguist with a microphone, who apparently knew the Native language better than his local counterpart, who had trouble in understanding him.⁴

One dance, which originated among the Nymylan Koryak, demonstrates the shaking wings of the first airplane, which had landed many decades ago in their village. This event had triggered spontaneous improvisation for a dance in which that movement was imitated to everyone’s great amusement at a social gathering in the community the same evening. The dance has been transmitted ever since, both within the group and through cultural exchanges with others, and it is today performed at informal feasting and even in discotheques (Kasten 2003). However, it is not considered suitable at staged performances for (foreign) audiences. Such spontaneous “intercultural plays” reflect actual social interactions and experiences, which transgress ethnic boundaries, much better than do reified and stereotyped “pure” ethnic styles. Some professional troupes performing the latter nowadays feel obliged to eliminate the Russian accordion, even where it had become a significant element in authentic Native culture.⁵

Authenticity does not arise as an issue so long as the exchange of cultural expressions and knowledge bound up with them reflect historic patterns of interaction between groups. With the increasing commodification of culture, however, authenticity has come to be frequently invoked to make a limited good out of a particular cultural tradition and its related body of knowledge. The claim to authenticity helps to maintain or increase the market value of a cultural product, such as that offered by a dance ensemble that is competing for tourists or hopes to receive invitations for concert tours abroad.

King’s example (*this volume*) deals with competition between two local Koryak ensembles in Palana, *Weyem* and *Mengo*. *Weyem*’s director Yetneut’s

family and their friends claimed that the performances of that ensemble are more “authentic.” Nonetheless it has been *Mengo* which attracts the largest Native (and non-Native) audiences in Palana and elsewhere. Even 15 years after his death, its director Gil’ is held in higher esteem in Kamchatka than any other artist, especially among Native elders in the most remote “tundra” areas.⁶ It would appear that *Mengo’s* performances are “authentic” in a different way, in that they build on concepts and dynamics that are inherent to Native Kamchatkan dance choreography. In contrast to Yetneut’s choreography juxtaposing Koryak dance moves with western music (King), *Mengo* corresponds perhaps more to Native styles when it seeks to draw creatively upon new ideas by integrating and merging them into a new coherent whole. What makes *Mengo* authentic in a unique way is that it amalgamates reflections of Native, Soviet, and post-Soviet “layers” in local people’s “real” lives. The choreography of a professionally-trained (in the Soviet system) ballet master and synthesizer music are combined with Native content, notably their expressions of traditional human-environment relations. This is achieved within the “real” political context of staged performances that, just like those of *Weyem*, address audiences both in Palana and in foreign metropolises.⁷



El'vel' in Sobolevo, 1996

photo: E. Kasten

It seems to me that all staged dance performances carry their own authenticity, provided that they do not pretend, for example, to be “an authentic representation of the way of dancing he (Yetneut) remembered

in his hometown, Manily” (King, *this volume*). While *Weyem* might achieve a brilliant imitation of movement and copy of form, a *staged* dance necessarily changes the meanings of the practices, ideas and objects involved.⁸ Some Native dances such as at the *O-lo-lo* feast of the Nymylan in Lesnaya are still performed today as part of traditional rituals in a few remote places in Kamchatka (Kasten 2003a).⁹ They derive their spiritual meaning from the specific context in which they are performed, which differs profoundly from that of commodified staged performances. The body movements may be similar, but the idea behind them is quite different. Reified fragments of cultural forms in staged dances can never be an authentic representation of a more complex “lived culture” (see Eriksen, *this volume*). A sudden song while walking in the tundra, recalling the cry of a raven, or a seaside dance of joy at the many fish in the net, mimicking how seagulls swoop over one’s head – these are spontaneous expressions of a particular mood or feeling. They give such dances and songs their distinct emotional qualities only in the given situations, which can hardly be created or summoned during staged performances.



Dance during the *O-lo-lo* feast, Lesnaya 2001

photo: E. Kasten

When I was asked a few years ago to organize a tour of shaman performers in Germany, it was not easy to convince the funding bodies that it would be impossible to present authentic shamans at a foreign festival,

since the context would not be appropriate.¹⁰ Eventually we agreed that a dance theater in the form of creative artistic expressions of shamanistic motifs by the Even ensemble *Nulgur* would be a more realistic option. A preparatory workshop was held in Esso in summer 1999, at which the results of the foregoing research and consultations by the young artists with elders were discussed (Kasten 2002). The script for the theater play “The travel of the shaman to the different worlds” was written and presented by Kirill Ichanga. The community elders consulted had no objections to having shamanistic performances shown on stage, as long as these were explicitly presented as artistic expressions and not as “authentic” representations of sacred rituals.¹¹ Ironically, while some members of the German audience were disturbed by the unexpected sound of synthesizers, people in Kamchatka loved the spectacle, which has since been incorporated into the standard repertoire of *Nulgur*.¹²

Rather than taking Native performers abroad on tours, the desire for “real” cultural properties, for the apparently pure and exotic, can better be satisfied today by the tourist industry. In December 2002, a group of French tourists sponsored the traditional *Kho-lo-lo* feast in the remote *olyutorskii* village Il’pyr in northeastern Kamchatka. The entire event was set up exclusively for the foreign guests. The feast was held in a “real” location (private houses, not on stage) and with “real” people (few or no professional artists). In this way it could be marketed as “authentic” in form, even if its meaning had changed and become more complex.

These illustrations suffice to show that definitions and judgements about authenticity in Native art, music and dance are so easily manipulated that the concept of authenticity can scarcely serve as a fruitful analytical tool for anthropologists. The multi-faceted nature of Native artistic expression (based on increasingly complex cultural experiences and identities) combined with the sheer variety of contexts in which the works and performances gain different meanings, make reference back to a “pure” baseline almost impossible and in any case futile. However, well worth studying are the ways in which Native artists still use the trope of authenticity competitively among themselves and in their attempts to impress foreign audiences, consumers and even ethnographers.

Cultural heritage: property of individuals, collectivities or humankind?

When Native peoples claim as their exclusive property traditions that also could be understood as the shared cultural heritage of a variety of other groups or peoples or, possibly, of humankind in general they present activists and global cultural agencies such as UNESCO with a dilemma.

Anthropologists have, at least since the 1970s, sought to distance themselves from what Thomas Hylland Eriksen (2001) has called the “archipelago idea of culture,” the idea that the world is made up of cultural islands, each discrete and bounded. But when they assert their cultural rights in negotiations with states and international agencies, Native activists are often forced to endorse and employ just such outdated concepts of imaginary boundaries. These arguments stand in contrast to current UNESCO ideas of a world in which diverse populations exchange ideas, learn cultural practices from one another and produce hybrid forms of culture, an interpretation that enables and encourages people to draw creatively on this diverse cultural reservoir.

Recent initiatives by foreign or global organizations such as UNESCO to take responsibility for the care of some kinds of cultural property may lead to the appropriation of decision-making power from local groups that have hitherto controlled such property. Such global initiatives are usually taken, however, only when local traditions are threatened by other, more powerful, outside forces, such as mining enterprises encroaching upon sacred lands. The risk that national and global indigenous organizations may usurp local decision-making powers, as in a current sacred sites project in the Russian North cannot be ignored (see Yefimenko, *this volume*); but the benefit is that this can mean effective protection of such places for future local spiritual practices.

The growing perception that certain kinds of cultural property are a unique joint property belonging to all humankind implies a shared responsibility to maintain it, to save it from extinction. Ongoing global efforts to preserve endangered languages are a good example, since linguistic variety affects cultural diversity, which can be viewed as a prerequisite for innovation and as essential for human existence in the long run (Maffi 2001).

Many state museums in Russia and in the West are now re-thinking imperialistic policies, according to which all artifacts originating from territories under the respective country’s political domain fell automatically into the ownership of state agencies and were listed in state registries. Understandably, states retain an interest in keeping and protecting the wealth and treasures found within their borders, and justify these very concrete material interests and motives by citing the need to “preserve the nation’s cultural identity.” Nevertheless, there is a growing appreciation among leading museum officials that many artifacts “contribute to a common culture of humankind” (Kupina, *this volume*); this implies joint ownership concepts and responsibilities.

The distinct qualities of tangible and intangible property mean that, while a particular object can only be in one place at a time, sharing the

cultural knowledge connected to it allows for more possibilities and gives greater scope for concepts of multiple ownership. Knowledge of the creation and contextual use of objects that do not fall into the category of secret or sacred can be shared and documented collaboratively. Such collaboration can help to maintain and enhance Native art and handicraft traditions, and thus community interests coincide with global concerns and responsibilities for preserving cultural diversity.

In practice, however, individuals from outside the Native communities may block such endeavors, e.g. by interpreting recent Russian legislation in ways that promote their own individual gain. According to the Law of the Russian Federation of 15 April 1993 N 4804-1 "On the Export and Import of Items of Cultural Value," it is prohibited to export objects having special historic, artistic, and scientific value. This value is to be determined by a commission on the basis of expert opinion. The expert chosen to rule on the foreign purchase of a collection and its export for an exhibit in Germany in summer 2003 was the employee of a local museum in Petropavlovsk-Kamchatskii, a person who has been building up her own museum collection over the past decades. Thus, from the beginning, there was an obvious conflict of interest, especially since this particular expert is angry at finding herself in competition with collectors who are able to pay fair prices to artists, and who are supporting Native art programs in the communities in other ways. Most of the proposed 116 items were initially categorized as objects of historical value, i.e. as being made before 1950. It was easy to prove that they were in fact more recent. For other objects, it was more difficult to challenge the expert's assessment that an object had "unique" artistic value.¹³ But in all of these cases the artists were still alive and capable of producing similar items or replicas, if they were to be commissioned. Finally, controversy arose about a group of items which were allegedly "ritual" objects. In fact, these were artistic expressions of religious motifs as is the case with most Native art and even tourist art; the objects themselves had never been used in religious or sacred contexts, and had not been made for such use, but exclusively for sale. The assessment procedure lasted several months. Native artists and the heads of village administrations wrote petitions to the commission stating that they wanted their art to be shown to a wider public abroad. Clearly, such exposure may stimulate increased international interest and appreciation for these traditions; it may bring income to the Native communities, and ensure that artists there can continue their work. In fact, orders and purchases for the exhibit mentioned above already proved this.¹⁴

This incident is instructive in several regards. First, it shows how a law can be applied in unintended ways.¹⁵ Second, it raises the question of who

should be authorized to decide about the transfer of cultural representations. Under the existing Russian law, the artists themselves and the Native community have lost their rights to dispose freely of their own creations. An outside expert can assess the cultural and artistic value of their works on a more or less arbitrary basis, which means *de facto* expropriation.

But there is a quite separate issue to emphasize here. In the interest of enhancing Native art traditions and preserving cultural diversity, it is largely irrelevant if a specific object resides in a museum in Kamchatka, in European Russia, or abroad. What counts is the knowledge connected to it. From this point of view, it was an advantage, in this case, that the Kamchatka objects ended up in German collections, where they could raise public interest and stimulate the debate about who is responsible for maintaining such cultural traditions. Their presentation at foreign exhibits has been, and will remain, tied to scientific programs documenting the objects' use or creation in the form of DVD publications.¹⁶ The Russian editions of these publications are used in education in the Native communities, the aim being to study and further develop local art and handicraft traditions. Without the umbrella of exhibition projects in Germany, it is hard to imagine how the necessary funds for these productions and for prior workshops with artists in Kamchatka could have been secured.¹⁷



Artistic portrayal of a Koryak
ritual fireboard
Anatolii Solodiakov, 2002
photo: E. Kasten

Returning knowledge to Native communities can be achieved in many ways. Together with Klavdiia Khaloimova, a Native scholar, and Michael Dürr, an ethnolinguist from Berlin, I am re-editing Itel'men texts that Waldemar Jochelson recorded at the beginning of the last century. Many of the stories themselves were lost in recent decades. Until now, the recorded texts were only available in a Latin-based transcript of the Itel'men text, and was not understandable to local Itel'men. In a sense, these texts had become the property of foreign academics. The new edition in contemporary Itel'men orthography will allow them to be used in schools, accompanied by Russian translations for those locals who are no longer in full command of the language. To many local people and regional administrations, this is seen as true repatriation. In contrast, physical repatriation alone, for example, the (hypothetical) transfer of the Jochelson manuscripts, would mean little to the community.¹⁸

I am arguing that the best way to further repatriation is to concentrate on making appropriated local cultural knowledge available again to local communities. This is a more effective way of keeping endangered cultural traditions alive than merely transferring the material manifestations of such knowledge, such as museum objects, especially if the objects themselves are not indispensable for the continuation or revival of related practices within the Native communities. In this respect, the term "repatriation" itself is problematic, since it does not reflect the basic premise of sharing the enhanced knowledge that often evolves from the kinds of collaborative processes described above. On the contrary, the term "repatriation" commonly evokes fear and resistance, since it implies that something is taken from one party and given to someone else. From the outset this establishes a conflict situation, whereas flexible ownership concepts encourage cross-cultural research partnerships and more effective ways of dealing with cultural property rights. New practices of cooperation can help to establish common ground. Michael F. Brown (2004, 60) suggests that "face-to-face encounters of people who are neighbors, who share even to a limited extent the overlapping allegiances characteristic of civil society, create a context in which indigenous concepts of property may spread, virus-like, into negotiated arrangements with institutions and ultimately the state."

No one would nowadays defend the earlier kinds of appropriation of Native knowledge and objects, allegedly carried out for the sake of science and a nation's identity; but strident claims for physical repatriation are often questionable and do not address the key issue of how to re-establish a connection to the cultural knowledge of the past for the benefit of Native communities in the present and future.

Anthropologists' property: sharing collected data with local communities

Who is the legitimate owner of the data collected by anthropologists? Ethical codes, which have mushroomed in recent years, are certainly useful for raising awareness about these issues, even if they are seldom applied in the field. Much depends, of course, on specific local circumstances, so that blanket regulations and moral judgements are unhelpful. It is up to the individual researcher to decide where and how a meaningful contribution can best be made, and to justify decisions in the light of one's own professional ambitions. Some may consider it more rewarding to focus on enhancing the academic debate and to receive recognition from the scientific community. Others may seek primarily to contribute directly to the local communities where the data originate. Depending on one's priority – and usually there is a combination of both – one might either be more inclined to keep one's data exclusively to oneself, or to share them. In the first case, one may have to define certain niches and modalities for sharing, satisfying the increasing demands for “political correctness” without divulging too much of the material one needs to support one's arguments in the scientific “rat race.” The alternative is actively to look for ways to share the data and to reconcile one's academic aspirations with one's concerns for local community interests.

The next questions are *what* to share and *how* to share it. Not every research finding that we might generously offer to share with local communities will make sense to them or be expected by them. A foreign colleague was asked during a recent workshop in Kamchatka if he could provide copies of his tape recordings to the community. The answer was that, of course, the final dissertation would be made available. This has long been a standard response to such requests, but even this measure is not always implemented and in any case, a dissertation in a foreign language is unlikely to mean very much to the Native groups. I suggest that even academic dissertations are compatible with respect for local needs and agendas. It is crucial that community orientated research be designed from the beginning in such a way that there will be something meaningful to share later on.¹⁹ This can be done if, from the start of a project, the community is consulted about pressing issues, which are then incorporated into the research program. One project that I have been involved with included a multidisciplinary assessment of the natural resources and environmental impacts of a given territory in Kamchatka. This provided valuable data for the later implementation of economic development programs in the area (Kasten and Dul'chenko 1996). In another case, an important issue of

community concern was language preservation, which led to a number of collaborative projects and the production of teaching materials for Itel'men communities (Dürr, Kasten, Khaloimova 2001).

The sharing of “raw” data with the communities (and automatically with other colleagues) poses complicated issues. There are two reasons why researchers might be hesitant from the outset to do either. First, it takes a considerable investment of time and effort to set up one’s database in such a way that it can be used by others. Second, this makes it easy for others not only to check but also to challenge one’s own findings or theories, for example by demonstrating that the data have been used selectively or interpreted inappropriately. Nonetheless, claims to ownership of data can legitimately be advanced by all who are involved in the process of collecting and refining data. The informant, the researcher, and in some cases local research assistants, all contribute value through their labor and expertise. Where a cultural tradition attributes ownership of recorded knowledge not to an individual but to a family or a group of people, additional provisions must be made. This is often the case, for example, among First Nations in the Canadian Pacific Northwest, but it is seldom a prominent issue for the peoples of Kamchatka, at least nowadays. As a first step toward exploring and defining ways of sharing data, my partners and I have developed a preliminary database on CD, containing raw data collected recently in northern Kamchatka. The data consist of interviews in each of the Native languages and its local dialectical speech variants. A full set of these CDs (Archive Kasten-Urkachan 2000 ff.) – to which full transcripts and translations of the recordings will gradually be added – is given to local partners in the community. Anyone can use the data freely for their own research or non-commercial purposes, including teaching. The recordings were made with the consent of the speakers, who agreed that all information would later be shared with others. They were advised, therefore, to omit any details that might later embarrass or compromise them within their community. It was made clear that the material would not only become the shared property of the community, but also the property of all humankind, since it contributes to the preservation of endangered cultural traditions and cultural diversity in a global perspective.

How can the data be protected against possible commodification by others? It is not uncommon for intellectual rights to research materials to be handled quite unconventionally in Kamchatka (and perhaps elsewhere in Russia). Information is occasionally traded without authorization in exchange for benefits of various kinds. This is of particular concern to local people who have collaborated on research projects, since even back in Soviet times authorship of academic works and the origins of cultural

expressions were not always acknowledged. Thus, a minimal requirement for the use of such data by others is correct quoting and full attribution: the contribution of those who have participated in its creation must be carefully and thoroughly acknowledged. Once this requirement is satisfied, other people are welcome to work with the data and to add to it. Only if someone aims to use the material for personal profit, i.e. to produce a commercial publication, is permission required from the original research team (Kasten 2003b); we stipulate that benefits are to be shared, according to *ad hoc* agreements. These procedures protect the public interest in having a free flow of knowledge for further cultural enhancement, and at the same time acknowledge the researcher's and informant's intellectual property rights.²⁰

Conclusion

The last decade has brought many impressive examples of how the shared responsibility for Native cultural heritage can lead to repatriation of the knowledge appropriated from Native groups in the past by foreign museums and academic institutions with the justification and promise that it was for the enhancement of science. In addition to the efforts mentioned above, we have seen outstanding contributions by Ann Fienup-Riordan (1998) and Igor Krupnik (2000) who, through their collaborative work with Alaskan and St. Lawrence Island Yup'ik groups respectively, provided the local communities with books containing a full record of their oral traditions. Such joint projects, which evolved from shared concerns for maintaining local traditions, led to an enhancement of traditional cultural knowledge and increased appreciation by the participating Native communities. In addition, promoting concepts of joint responsibility and ownership tends to encourage cross-cultural collaboration. On the grass-roots level, most Native experts who are seriously concerned with preserving Native knowledge see the clear benefits of such collaboration. Its basis is a shared commitment to search for balanced solutions that ensure the protection of intellectual and cultural property rights. These are more effective when they downplay the political rhetoric of claiming exclusive rights. Brown (2003, 242) suggests "addressing questions of cultural property through the diverse institutions of civil society ... [as] ... this approach offers distinct advantages over ... strategies focused narrowly on law and mechanisms of state power." However, he concedes that this "is a slow, demanding process that cannot solve all problems." Since the same is true of all other approaches, perhaps the best we can do is pursue these strategies that do not create more problems. The optimum way forward for anthropology

in my view is to argue from the point of view of the world community, which has an interest in maintaining cultural expressions that are relevant to all humankind. This strategy has the merit of avoiding the danger of hindering (or even blocking) the productive dialogues that are currently emerging in Kamchatka and elsewhere.

Notes

- 1 This chapter is based on my opening presentation at the conference *A World of Cultures: Cultural Property in Anthropological Perspective*, which I convened jointly with Deema Kaneff in Halle on 1–2 July 2002. It is a modified version of a previous paper “Cultural Heritage: Property of Individuals, Collectivities or Humankind?” Working Paper no. 39. Halle: Max Planck Institute for Social Anthropology (2002). My thanks to Keebet von Benda-Beckmann, Barbara Bodenhorn, Chris Hann and Deema Kaneff for their comments on earlier drafts. I am grateful to the Deutsche Forschungsgemeinschaft and to the Max Planck Institute for Social Anthropology for funding field-projects in the Canadian Pacific Northwest and in the Russian Far East, on which most of the conclusions in this chapter are based.
- 2 The concepts of “Native” and “Western” are, of course, terminological simplifications, to be understood as general orientations in thought and practice. In the following, both hybridities and variations *within* Native communities themselves will be stressed: these provide important clues for understanding the complexities of local cultural property debates.
- 3 In certain cases the use of sacred dances in profane settings is accepted, as during so-called play potlatches (Kasten 1990, 89–91), which are held for entertainment and are meant to prepare children for the serious ceremonies later on. In contrast, staged performances for outsiders, such as those in Kamchatka (see below), would be contrary to ethical codes with regard to the supernatural among the Kwakwaka’wakw, since usually the story – and the secret knowledge – are connected to these dances in the form of particular songs. Masks similar to those used in these dances, however, can be produced and sold to foreigners, as the story does not go with them, and thus the masks have no sacred meaning. (I am grateful to Barbara Bodenhorn for discussion on this point; she also stressed that, in the world view of many Native peoples, knowledge rather than the thing itself creates the “sacred” (see Bell 1983, Harrison 1990).
- 4 My nephew was honored in a similar way 1987 in Gwa’yi, a Native village in the Canadian Pacific Northwest, after a fishing trip had ended with mixed results: At the next play potlatch, the untalented stranger, carrying a fishing rod with a rubber boot on its hook, was featured in a dance.
- 5 Brown remarks for other Native peoples in the Americas that “polycultural experience has given rise to fresh and distinctive artistic forms. [...] The ubiquity of these processes of cultural recombination must not be seen as compromising the authenticity of indigenous individuals or groups” (2003, 221–2; see also Ventsel, *this volume*).
- 6 The Ukrainian Aleksandr Gil’ – who married into an Even-Nymylan family that is well-known for its traditional knowledge and cultural competence – lived for long periods in remote settlements and camps together with knowledgeable

- elders. He studied their Native traditions, from which, together with his Native artists, he then created *Mengo's* performances. His method was later followed, or copied, by others such as Yetneut.
- 7 The eagerness on the part of Native Kamchatkans to amalgamate in creative ways their own content with foreign forms is also seen in other (new) cultural expressions, notably in literature. The *agit-culture-brigades* brought not only Soviet propaganda to the outlying camps, but also the works of well-known Russian writers. Many Native people were so fascinated by them that the encounter led to experiments with new forms of reflection and expression, especially those relating to relationships between human beings and nature. Thus, the reindeer herder M. G. Yaganov (n.d.) began to articulate his tundra experiences in European verse forms, because he was greatly impressed by reading Pushkin's and Lermontov's lyrics.
 - 8 See Kupina (*this volume*), who refers to a Yamal-Neenets shaman drum which lost its sacred meaning by being displayed in a museum. In the eyes of the Yamal-Neenets, the real value of the object was thereby "destroyed," and they were no longer interested in possessing it.
 - 9 In this DVD publication, Native dances are shown in varying contexts in which they not only display stylistic variations, but reveal different meanings as well.
 - 10 That "real" shamans are hard to find today in Kamchatka, following the Stalinist repressions of the 1930s and later Soviet politics, may have presented an additional problem.
 - 11 The explicit de-contextualization of the sacred can render otherwise contested use to be tolerated. In a similar way, by composing various narratives or elements thereof ("sekundäre Fiktionalisierung"), Henry Tate could circumvent likely objections from the "owing" families, when he recorded Tsimshian texts in the Pacific Northwest (Dürr 1996, 234).
 - 12 Although such authorization by the elders is indeed important, potlatch discourses in the Pacific Northwest are the clearest demonstration that full consensus in the community is unlikely to be reached. In any case, merely to know that the director of a dance troupe has been assured in a phone call by a grandfather about the "authenticity" of his performance (King, *this volume*) is unconvincing, especially if the laudatory statements of other elders for the other, competing ensemble are ignored.
 - 13 It is self-evidently true that every original artistic creation, in contrast to mass-produced tourist art, is "unique." This allows this clause of the Law to be arbitrarily applied to all objects of art, including those in which commission members may have a particular interest.
 - 14 Eventually, the *oblast* and *okrug* administrations stepped in to support the case for the foreign exhibit. The objects eventually arrived 10 days prior to its opening.
 - 15 The law itself is certainly necessary, especially in post-Soviet Russia, where the uncontrolled and often illegitimate appropriation of cultural representations by outsiders is a serious problem. Another reason why Native people are reluctant to see local museums taking custody of precious items is that such objects frequently "disappear" from the collections. This happened to a valuable shaman costume that was recently given in trust by the descendants of a shaman family to a local museum in Kamchatka, on the understanding that it would therefore remain in the community.

- 16 A first DVD has already been produced and made available to Native communities (Kasten 2003a). Further volumes of a DVD-series on more specific craft and art traditions, under the general title “Ethnographica in Context,” are being produced under an international project with various museums.
- 17 For example, the documented sessions held with artists in Lesnaya in 2002 and 2003 resulted, among other things, in the rebuilding of a traditional skin boat (*matev*), of which only two are still in use. Otherwise, the knowledge of how to construct such boats might become lost in the future.
- 18 A similar approach has been taken by the Museum of Anthropology and Ethnography in St. Petersburg, but in this case it involves the return of a collection to its place of origin, where these ritual objects can now be used again in Lamaist practices in Buryatia (see Kupina, *this volume*).
- 19 The integration of Native interests into a scientific research program does not necessarily imply “advocacy anthropology.”
- 20 This approach is similar to recent initiatives under *the Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities* and the *European Cultural Heritage Online* project. The *Berlin Declaration* states that “establishing open access as a worthwhile procedure ideally requires the active commitment of each and every individual producer of scientific knowledge and holder of cultural heritage.” Open access contributions include original scientific research results, raw and metadata as well as source materials and digital representations of pictorial and graphic materials. The authors and right holders grant to all users a free, irrevocable, and universal right of access to these contributions, and allow their work to be used, reproduced, or disseminated in digital form, provided correct attribution of authorship or copyright owner is given (see *Max Planck Society Press Release, October 22nd, 2003. <http://www.mpg.de>*).

The *European Cultural Heritage Online* (ECHO) charter “aims at defining the criteria for adequate exploitation of the new media’s potential for archival preservation, scholarly and educational exploration, as well as public distribution of the shared cultural heritage of mankind.” It promotes steps “to undertake all efforts to make cultural heritage accessible and understandable to the general public across national, cultural, and linguistic barriers, to support the preservation, exploration, and dissemination of content belonging to shared cultural heritage, and to provide the tools for accessing cultural heritage according to its context and semantic structures.” However, ECHO “excludes any violation of intellectual property or person’s rights” (<http://echo.mpiwg-berlin.mpg.de>, 2003/12/1).

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