

Symposium Report: Only in America?  
Ethnographic Archives, Communities of Origin  
and Intangible Cultural Heritage

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# Symposium Report: Only in America? Ethnographic Archives, Communities of Origin and Intangible Cultural Heritage\*

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Following the adoption by the 2003 UNESCO General Conference of the *Convention for the Safeguarding of Intangible Cultural Heritage* many States very quickly embraced and ratified the Convention (by the end of May 2007 there were already 86 States Parties), while others countries seem much more hesitant or even hostile. These differences in national attitudes towards ratification are potentially very interesting. While the August 2006 Symposium: Ethnographic Archives, Communities of Origin and Intangible Cultural Heritage held in Washington D.C. at the National Museum of the American Indian (NMAI) and the Library of Congress did not address directly the possibility of ratification of the Convention by the United States it did nevertheless touch upon some of the central issues in the Convention, in particular the managing, preservation and access to intangible cultural heritage. The Symposium, and this brief review of it may therefore serve as contribution to the debates about intangible heritage issues taking place more widely around the world, and therefore is not only of relevance to the United States, since some of the different questions and criticisms voiced during debates may be of relevance to other States that remain hesitant about the concept, meaning and values of 'intangible

cultural heritage' as defined in the 2003 UNESCO Convention.

Most of the Symposium contributions focused on the special challenges posed by the variety of often quite different forms of ethnographic materials that relate to indigenous communities, and was inevitably coloured by the USA's 16 years' experience of applying the groundbreaking Native American Graves Protection and Repatriation Act of 1990 (universally referred to as NAGPRA).

The list of symposium speakers counted some of the leading authorities in the United States. These included Suzan Shown Harjo, who is a prominent member of the Southern Cheyenne & Muscogee (formerly known as "Creek Indian") People, and a Founding Trustee of the National Museum of the American Indian (NMAI). She is also Director of the Morningstar Institute, a policy institute based in Washington D.C. that has been pivotal in the development of the last three decades of federal legislation on Native American issues including NAGPRA; 1990. She was also the principal author of the NMAI Policies on Repatriation (1991), Indian Identity (1993) and Exhibits (1994). Moreover Harjo has been pivotal in developing a succession of key federal Indian laws:

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American Indian Religious Freedom Act (1978); National Museum of the American Indian Act (1989); Native American Graves Protection and Repatriation Act (1990); and Executive Order on Indian Sacred Sites (1996).

Other main speakers included Jane Sledge, Associate Director of the National Museum of the American Indian, and a very experienced museum documentation and information systems specialist, Michael F. Brown, Professor of Anthropology & Latin American Studies at Williams College in Massachusetts and the author of *Who Owns Native Culture?* (2003) (which earned him a status as the “commanding figure in the debate on culture and copyright”), and Karen J. Underhill, Head of Special Collections and Archives at the Northern Arizona University. She had hosted a recent international gathering which led to the June 2006 release of a draft Code of Best Practices and Guidelines for the Safeguarding and Use of Native American Archival Materials (available on line at: <http://www2.nau.edu/libnap-/index.html>)

The Symposium was divided into four parts. An opening morning session at the NMAI began Jane Sledge’s mapping of NMAI’s emerging practice, and this was followed by Karen Underhill’s presentation of the newly released Code *Protocols for Native American Archival Materials* (PNAAM). These two practical and applied presentations were then followed by two more analytical and policy oriented lectures delivered respectively by Michael Brown and Suzan Shown Harjo focusing on the notion of ‘cultural sovereignty’ for Indigenous communities.

The following technical workshop, led by the American Folklife Center staff, provided valuable insights into the preservation and cataloguing principles of audio-visual collections at the Library of Congress illustrated by practical case studies, and the continuing themes

through these presentations were digitization and systems for creating metadata, cataloguing principles, preservation of multi-formats, and accessioning.

The First Panel Session that followed featured a presentation on archival practice at the National Anthropological Archives by Robert Leopold, Director of the National Anthropological Archives & the Human Studies Film Archives, housed by the Smithsonian Institution, Washington, D.C. and adjunct professor in the Museum Studies Program at George Washington University. (He had also participated in the 2006 international workshop that drafted the important Code entitled *Protocols for Native American Archival Materials*.)

Experiences with digitization of Aboriginal intangible cultural heritage in Australia were presented by Linda Barwick, Director of the Pacific and Regional Archive for Digital Sources in Endangered Cultures (PARADISEC) and Senior Research Fellow, University of Sydney. This was followed by two lectures on the historical vicissitudes of ethnographic field material in Jamaica and Afghanistan-Tajikistan respectively. That on Jamaica was delivered by Ken Bilby, an anthropologist, ethnomusicologist, cultural historian, and recordist, who is currently a Research Associate at the Smithsonian Institute, Dept. of Anthropology. He has published numerous scholarly articles on Caribbean music and culture, and in 2004 was awarded a Guggenheim Fellowship to research a book on the vital role of deep-rooted rural musical traditions in the development of urban popular music in Jamaica. The paper on Afghanistan and Tajikistan was given by and Margaret Mills, Professor at the Near Eastern Languages and Cultures Faculty at the Ohio State University (OSU), and is widely regarded as a leading specialist in the popular culture of the Persian and Farsi-speaking world.

The Second Panel Session included four presentations on Indigenous archival practice by Jennifer Walele (a member of The Confederated Tribes of Grand Ronde/Chinock, an Archivist at the U.S. Department of State and a Ph.D. Candidate in History at Georgetown University), David George-Shongo (Tribal Archivist, Seneca Nation of Indians Tribal Archives, Chair, Native American Archives Roundtable, Society of American Archivists), and Alvin Windy Boy, Sr. (Tribal Historic Preservation Officer, Chippewa Cree Tribe). The Symposium concluded with a Question and Answer session and the drawing up of some preliminary conclusions. In the space available here I can only discuss the implications of the views expressed in the keynote addresses of the opening section of the symposium, but it is hoped to survey in the future the wider discussion and critiques of the concept of intangible cultural heritage and thus do justice to the other lectures delivered at the Symposium.

In her Keynote Jane Sledge presented the 'Indigenous Knowledge Management Project' characterising this as the 'science of cultural access'. She characterised this NMAI project as an endeavour in which the criteria continuously had to be redefined and readjusted, making the project constantly evolving. In essence, the project is about how information technology tools can be refined and extended to enable indigenous communities to preserve and protect their intangible cultural heritage, whilst supporting traditional protocols and facilitating better cross-cultural communication and understanding. The objectives of the project are, in collaboration with Indigenous communities, to develop metadata models which satisfy the indexing and search requirements of indigenous communities, as well as to develop digital curation tools facilitating restricted access based on a set of criteria defined by customary law notions of gender, age, role, kinship, and ritual calendars. Sledge rounded

off her presentation by quoting NMAI Director Richard West for saying that according to Western Cheyenne ontology the tangible and intangible realms are inseparable. This brought her to some concluding remarks about NMAI's "holistic approach" to access and associated intellectual property issues.

Karen Underhill's paper outlined the background to, and key principles of, the newly launched ethical and professional practice code *Protocols for Native American Archival Materials* (PNAAM). She stressed that the Code was written from a Native American perspective and that its governing principle was the recognition of Native Sovereignty. Underhill illustrated the potential of ethnographic repositories for promoting and recovering traditional knowledge, but also reported an example of the misappropriation of this in a TV commercial.

She touched on the major inspirations for the new American Code, referring in particular to the earlier Australian guidance '*Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services*' <http://www.cdu.edu.au/library/protocol.html>). Regarding intellectual property issues, Underhill said that the key problem for Native Americans and other indigenous peoples was that under current national laws and international conventions all copyrights eventually expired. However, often Native communities wanted certain knowledge to remain protected in perpetuity, akin to the notion of the *Droit Morale* of an artist in the civil law tradition. She also touched upon another key question in the U.S. context: does the law, and in particular NAGPRA, also apply to field notes, photographs and other types of documentary material. Some museums had returned such intangible heritage documentation to tribes as part of the settlement of a NAGPRA claim, but currently there was no case law on this.

Another key principle of the Code was the appeal to tribes to develop their own research protocols. As an

example of best practice in this field, Underhill focused on those developed for the Hopi Native American tribes by the Hopi Cultural Preservation Office. Underhill concluded by addressing the question of formal endorsements of such Codes. Several organisations had already pledged that they would endorse the *Protocols for Native American Archival Materials*, but the exact number of endorsements by professional organizations remains to be seen.

Michael Brown opened his talk with the confession that he had run out of new ideas about cultural and intellectual property and that he therefore regarded his role in the Symposium as that of a 'participant observer'. His talk was retrospective and revolved around what went into the making of his book *Who Owns Native Culture?* (2003), and the critical reviews this had received. Brown stated that he would have to think twice about repatriating his own field notes recorded in Peru back to the local communities, because they were of a private and inchoate nature. However, Brown contended that Native Nations should be fully entitled to impose their own protocols on researchers within their own dominions, as the PNAAM Code encourages.

Brown then addressed the reviews of his important work, opening with a quote from an Australian reviewer: "A good book to think with and against". Brown thought this was the best possible critique, because it reflected his intentions: to make often convoluted intellectual property issues accessible and bring them to the forefront of public debate. He then summarised the various critiques of his book under two general groups. The first was that Brown's solutions are 'too pragmatic' in taking for granted the workings of the Western legal system. Responding to that challenge, Brown said that any grandiose generalized normative regime would never work: 'There is no magic bullet', as he put it. In his view, any viable approach had to be flexible and adaptive to specific situations.

The second major group of criticisms turned on Brown's notion of 'cultural sovereignty' which, according to Brown's critics, the book was alleged to have consistently failed to acknowledge and respect. Brown's response to this was that since the beginning of time, humans had stolen and appropriated different cultural traits from each other. He argued that the very foundation of different cultures was the movement and exchange between them. According to this view every culture, be it modern or traditional, global or local, is the product of

syncretism, (the attempted reconciliation or union of different or opposing principles, practices or parties). He further argued that there was never such a thing as 'cultural sovereignty', nor will there be one in the future as the information society grows ever more interconnected and entangled.

By implication Brown argues, controversially, that the idea that Native Nations should be given the right to exercise control over the circulation of 'their' cultural productions in the public domain is simply 'nonsense' and out of step with current realities of the global information society. Brown concluded his talk with the suggestion that instead of debating sovereignty, ownership and 'one size fits all solutions', we should talk about how to 'share the benefits' of cultural products and innovations. Such a benefit-sharing approach could be regional or global and would stress practical and flexible resolutions to specific situations, rather than any monolithic and generalized legal solutions.

Suzan Shown Harjo contested Brown's stand, and offered a broad defence of the applicability of a uniform legal regime to the management of intangible cultural heritage. She stated that tribal laws have worked for millennia and that Jefferson's and Adam's Bill of Rights (i.e. Amendments 1 to 10 of the United States Constitution) did not spell everything out, but nevertheless carried fundamental meanings, which had worked in favor of justice for all. (Though not explicit on the point, presumably Harjo is referring to the First Amendment's provision on the right to exercise freedom of religion, which probably was the basis for the development of the American Indian Religious Freedom Act (1978).

Directly confronting Brown's views on of 'cultural sovereignty', Harjo stated that she did not like any 'modifiers to sovereignty', and continued 'Sovereignty is a fact. You either have it or you don't. There is nothing in between'. In emotionally charged and evocative ways, Harjo spoke about 'cultural predators', which she defined as Westerners who had no ideas or culture of their own, but who took the original ideas and cultures of Native Americans and couched them in the language of 'archaeology' or 'ethnography'. Reversing the usual distinction between idea and expression in copyright doctrine, Harjo stated that tangible expressions were intangible ideas in Native American cosmologies. What needed protection against theft and misappropriation were the ideas.

She used this reversal of conventional copyright doctrine as a springboard to present an argument about the applicability of NAGPRA to the intangible domains of Native American cultures. Harjo discussed the case of so-called Native American ledger books. Historically, figurative arts among the Plains Indians of North America chronicled the life and deeds of warriors and chiefs and their experiences of war, hunting, religious ceremony, and courtship. These abstract visual narratives were created on rock, buffalo hides, robes, and tipis. However, from the 1850s and the 1870s these Native American warriors experienced tremendous upheaval through increased contact and conflict with European Americans, leading to massive bloodshed and to the transformation of everyday life on the Plains.

In the same deeply troubled period warrior-artists acquired by both peaceful and violent means ledger books, cloth, ink, pencils, and colored pencils, and later notebooks, sketchbooks, muslin, and watercolours from European colonists and military personnel. With these they recorded visually their historical past and the then tumultuous confrontations of the present. Many art historians and anthropologists nowadays see the ledger books as examples of how Native American artists have adopted and adapted Western materials, methods, and conventions to their own artistic traditions, thus inventing new art forms that comment upon and document cultural transitions brought on by Western education and cultural domination. Harjo argued that, for instance, that Plains ledger books visually depicting different historical events and deeds of the Plains Indians do meet the requirements for the NAGPRA category of 'associated funerary object', because within the Plains *Dogman Society* this type of items were intended as burial goods.

Moving on to address the language of the law, Harjo contrasted western legal thinking with Native American modes of thought. The former emphasized *Rights*, the latter *Responsibilities*; the former stressed *Property*, the latter *Obligation*; the former gave priority to *Title*, the latter the *Authority* to do something; and the former codified *Entitlement*, whereas the latter afforded certain *Privileges* to some of its members. NAGPRA was, in her view, a piece of legislation which deployed the western legal language of rights, property and control, though the wording of the law served as a mean to authorise and enable Native Americans to exercise their fiduciary *obligations vis-à-vis* their cultures. According to Harjo, NAGPRA restored the 'prior and primary rights' to protect

Native American cultures against commodification and misappropriation.

Overall, the Symposium gravitated into a post-NAGPRA debate. Behind legalistic questions specific to NAGPRA loomed the much larger question of whether NAGPRA was applicable to intangible cultural heritage. This question remained unanswered throughout the Symposium, which ultimately returned to the central issue contended by the two keynote speakers (Brown and Harjo), namely whether the best approach to the relation between intangible cultural heritage and intellectual property is a uniform legal regime as advocated by Harjo, or an ad hoc negotiated and flexible benefit sharing approach advanced by Brown. In terms of international comparisons, the interesting question is whether this very close coupling of intangible cultural heritage with intellectual property rights is specific to the United States. 🇺🇸