

Copy Wrong and Copyright: Serial Psychos, Coloured Covers, and Maori Marks

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The three papers, in very different ways, deal with questions of reproduction, from the good and the bad, so to speak, to the ugly—the assimilation of American popular music by "coloureds" in South Africa discussed by Carol Ann Muller; the appropriation of indigenous cultures in New Zealand, the subject of Peter Shand's paper; serial murder in the USA, discussed by Philip Jenkins. Each discusses the legitimacy of "copying," and shows how it can indicate both orthodoxy and deviance, self-expression and lack of originality, continuity and appropriation. It seems clear that the context of the copying as much as and perhaps more than the object of the copying is what raises the complex issues discussed by the three authors.

Seriality, reproduction, and copying are subjects that have been discussed in folkloristics mostly under other names. Hans Naumann's concept of "*gesunkenes Kulturgut*" in the 1920s saw the reproduction of elements of high culture by the lower social classes as characterizing much folklore materials. The passing of literary tales into oral tradition has been studied in many contexts. The notion of tradition, central to the discipline for much of its history, has conventionally been understood as a form of reproduc-

tion and in that sense the "tradition bearer" (a rather dubious term to say the least) is someone who copies. Ritual can be linked both to seriality, referring to regular succession, as well as to reproduction, since it should follow a prescribed form in its performance and often imitates a myth or an aspect of a myth.

But copying presupposes that the copy is as stable a form as the original. The difficulty of the notion of the copy in folklore is that folklore itself—rather like language—is usually understood as being anonymous, communal, and characterized by variation, where the superorganic "original" exists only in the virtual world of *langue* or competence or Aarne-Thompson type, and the "copy" alone—*parole*, performance, version—has an objective existence, even if only in the moment of utterance. If variation characterizes an art form, then can the notion of ownership even exist, and if ownership, copyright? Copying, after all, presupposes an original. Still, J.H. Delargy has shown in "The Gaelic Storyteller" that storytellers could have some sense of ownership of tales. He tells of a storyteller who was anxious that his rival should not hear a tale he told and was particularly proud of. About to begin his tale in a house one night he asked was his rival present. Satisfied that he was not he told his favorite tale, whereupon the rival emerged from hiding calling out "I have the tale now in spite of you!", immediately began to tell it, and finished as dawn was breaking (Delargy 1945, 200).

The jealous storyteller, of course, did not invent the tale, which he had ac-

quired in the same way that he acquired the rest of his repertoire. But the fact that the tale was not widely known gave him a certain advantage over his rival, and the advantage depended on the rival remaining ignorant of it. This is still not the same as intellectual property, though ownership of a kind may accrue from an admired individual interpretation. Anthony McCann's work on the controversial expansion of the Irish Music Rights Organization into the domain of traditional music shows how it led to an eventual contractual agreement with the principal traditional music organization under the terms of which "traditional music in its original form" was free of copyright, whereas recognized individual interpretation was not (McCann 2002, 70). This question of authorship and authorization is one of the issues discussed in depth in Peter Shand's complex and enlightening article on intellectual property rights and indigenous arts.

Copyright can threaten as well as protect a community's cultural heritage. Privatizing the cultural resources shared by a community is a form of alienation and—notionally, at least—breaks the chain of transmission by which cultural traditions span the past, present, and future. According to Sven Lütticken, "[w]e have reached a strangely archaic state of civilization, where the idea of emulation has given way to the taboos of copyright—as if Barbie and Harry Potter were images of gods guarded by a caste of priests, and to make unsanctified use of them were blasphemous" (Lütticken 2002, 90). The band Negativland argue that "cultural evolution is no longer allowed to unfold in the

way that pre-copyright culture always did. True folk music, for instance, is no longer possible" (Lütticken 2002, 89). Capitalist society at least acknowledges this problem with time limitations on copyright, after which the work of art falls into the public domain. At the time of writing, a case in the US Supreme Court is challenging the success of major players in the culture industries, such as Disney, in repeatedly extending their copyright beyond the usual expiry date ("Larry Lessig vs. Hollywood," *Chicago Tribune*, 9 October 2002).

Culture as an intellectual commons, to which all members of a community have access as a resource for building the future, is a metaphor widely used in the context of the privatization of the world's cultural and natural heritage. While the medical and agronomic knowledge produced by non-Western cultures—referred to as indigenous or traditional knowledge—has been treated as nature, and subjected to various forms of exploitation from patenting to genetic engineering, the Romantic cult of the artist's originality and autonomy underlies the copyrighting of cultural heritage in the West (cf. Sheri J. Tatsch, review of *On Biocultural Diversity: Linking Language, Knowledge, and the Environment*, edited by Luisa Maffi, in this volume).

(i)

The intellectual commons is very different to the right to appropriate at will from other cultures. The concept suggests a reciprocity based above all on relative equality, which is not a characteristic of the relationships between indigenous

peoples and settler peoples. But neither is it a characteristic of the relationships between the traditional arts and the formal systems of commerce and law. In practice it is often difficult to distinguish between notions of the indigenous, the traditional, and the popular, which are modern notions and indeed are constructed as the other of modernity. In some ways they coincide with Gramsci's notion of the subaltern. Both the indigenous and the traditional may also rest on ethnic distinctiveness, and the former nearly always so, but they are subject to the control of the state and national society.

The modern state wishes to integrate both "the traditional" and "the indigenous" into national life. The industrial era, contends Ernest Gellner, is the age of a universal high culture (Gellner 1983, 35), and he argues that in the development of the modern European nation-state the options for folk culture were either "induced oblivion" or "created memory" (Gellner 1996, 139). In the latter case, where high culture was usually of foreign origin, traditional culture was appropriated to provide a symbolic underpinning for the modern nation-state. Traditional cultures since the time of Herder have been appropriated as national culture: this is Gramsci's notion of the "national-popular," exemplified in the creative ambiguity of the German word "Volk": nation, people, and plebs (see Forgacs 1993, 187-188). The value of traditional culture to Herder was that it reproduced the *Volksgeist*. This did not preclude high culture from doing likewise, although in practice it did not; that was the reason for Herder's project of cre-

ating an authentic German literature.

Indigenous groups, though incorporated into the wider society through state institutions and capitalism, have rarely (the exceptions being Latin American) provided a symbolic foundation for the modern nation-state. Indigenous cultures, like European traditional cultures, have been idealized from the pre-Romantic to the postmodern eras as implicit or explicit challenges to modernity, but their specificity, their authenticity, depended on their distance from modernity. The "noble savage" to Rousseau and folk culture to the Romantics were meant to relativize the universalist claims of European high culture in the way that "indigenous knowledge" today relativizes the Western episteme (cf. Gupta 1998, 172, 179). European folk culture's symbolic value, though, unlike that of indigenous culture, was above all in the national domain, and copyright of the consequent folklore archives rested not so much with the contributors or their descendants as with national institutions.

It is dominant groups in society who determine which cultural elements are superior and worthy of being preserved. Subaltern groups may create cultural products of great aesthetic value, as Néstor García Canclini points out, but they have not the same possibilities to accumulate these products over time, to elaborate them through formal training and institutionalization, and to gain recognition for them as part of the general cultural heritage (García Canclini 1995, 137). Gramsci depicted folklore as "a conception of the world and life" that was not elaborated or systematic since these

latter qualities are in fact characteristic of hegemony (Gramsci 1985, 189). Without this elaboration, it is more difficult to protect cultural products through copyright.

Claude Grignon and Jean-Claude Passeron see cultural relativism as attributing autonomy to popular cultures, but to do so "it must . . . treat dominated cultures as if they were not so." An alternative position they outline refuses to ignore the relationships of force underlying the various statuses of different groups constituting a legitimate social order. Where "the populist marvels at discovering the symbolic treasures in a popular culture . . . the bourgeois like the *misérabiliste* sees only penury" (Grignon and Passeron 1989). Néstor García Canclini extends this argument. He argues that "the majority of the texts on craftwork, festivals, and traditional music catalogue and exalt popular products without situating them in the logic present in social relations. They limit themselves . . . to listing and classifying those pieces . . . which stand out by their resistance or indifference to change" (García Canclini 1993b, 65-67, 71-73). The process of identifying this "resistance or indifference to change" is a form of elaboration whereby popular artistic forms are "fixed" by the collector. As such they are more easily owned and copyrighted. Barbara Kirshenblatt-Gimblett has pointed out that the process of collection creates scarcity, and turns serial ethnographic objects into singular artifacts that, because of their singularity, acquire the aura of the art object (Kirshenblatt-Gimblett 1991, 388-393).

The development of markets for

"primitive art" and "folk art" in the twentieth century led both to their "promotion" to high art, through institutions of patronage such as collectors, specialist journals, and galleries, which emphasized singularity, and to the place-specific, "typical," qualities of tourist kitsch, which depended on mass production. But these cases may not represent appropriation as such since the indigenous or folk producer may supply the market. It is when the outsider enters the picture that the accusation of appropriation comes into play. Hence, looking at the appropriation of indigenous cultural products, Peter Shand sees a divide in practice between "a commercial use with high intellectual pretensions (the fine arts market)" and a "more base and more explicitly commercial exploitation." He defines appropriation "as a mode of cultural engagement [that] is dependent on an ability to separate a given object or design from its cultural milieu for the purposes of its employment in a different one," pointing out that "it is predicated on formalist assumptions as to the recognition and meaning of cultural heritage."

This definition is not that far removed from Lauri Honko's notion of "the second life of folklore," referring to folklore material being used "in an environment that differs from its original cultural context," and Honko makes a convincing case for the rejection of more negative notions in order "to try to restore the research value of events in the second life of folklore to something approaching their indisputable cultural value" (Honko 1991, 43). Néstor García Canclini argues that what he calls "cultural recon-

version" prolongs the existence of traditional cultural forms by articulating them to modern processes:

cultural reconversions, in addition to being strategies for social mobility, or for following the movement from the traditional to the modern, are hybrid transformations generated by the horizontal coexistence of a number of symbolic systems. . . . High, popular, and mass art nourish each other reciprocally. (García Canclini 1992)

Still, Shand does not quite accept the postmodern position that "all forms of cultural production occur within a complex field of interaction, quotation, and re-quotation." He supports the contention that "to try to isolate the koru [a much appropriated Maori pattern] in any way would stifle its ability to communicate and participate in contemporary culture." Shand argues that "it is not clear that the languages (linguistic, artistic, symbolic) of indigenous peoples are so 'cut loose,'" though his contention that "language is what sustains people," backed up by a Maori saying that when language is lost "humanity will be lost," is a rather Herderian argument.

In settler societies, settlers' culture is often experienced as imitative and provincial, a copy lacking both the metropolitan sophistication and the sense of place of its European source. "We Brazilians and other Latin Americans constantly experience the artificial, inauthentic and imitative nature of our cultural life," as Roberto Schwarz has put it in a celebrated essay (Schwarz 1992, 1). Elements of indigenous culture have often been subject to appropriation for that

reason, though within limits, since indigeneity also points to prior ownership of and a continued moral claim to the land. Symbols of national identity or national qualities taken from nature in settler societies—bald-headed eagles, maple leaves, kiwi birds, kangaroos, sabras (though let it be said that this is a special case)—in part sidestep that problem.

Colonialism has decimated indigenous communities. Every indigenous language in the Americas, Australia, and New Zealand is endangered. Indigenous peoples are alienated from their own ethnic traditions and yet excluded from equal membership in the dominant settler society. Not unaware of modern political ideas, they have a variety of attitudes towards their own heritage. Defining a community is difficult in ethnographic practice, while legal definitions are inevitably conservative and fossilizing. The community's own depiction of itself may represent a traditional ideal of cultural reproduction, while the state's understanding of the community may be the product of the bleak statistics of its own most interventionist agencies. The ideal self-definition of the community may be part of an attempt to "hold" history when history has been experienced as a succession of catastrophes, but it can also silence voices within itself. Definitions of the community essential to the legal protection of community-based cultural products are thus fraught with difficulty.

If indigenous culture has become greatly weakened, it may be more difficult to distinguish its products from those of the rest of the population. Beate

Sydhof has referred to such a problem in the case of European "folk art": "We have assigned it the role of a concept from the old rural society and set it in the mould of an antiquated relic." She shows that after its alternate idealization and commercialization, it emerged "in the shape of specific objects destined mainly for the mass tourist market." The problem is that "any connection with 'the people' has long since disappeared," the "people" "have gone on to create quite different things," and "a gulf has arisen between the conception of folk art and the reality of folk, or popular creativity" (Sydhof 1992, 185).

The colonizer and the colonized are not foreign to one another in the postcolonial society. Gramsci's notions of the hegemonic and the subaltern are useful here since they are premised on participation in a single social system, though they may cut across colonial divisions premised on race. The colonized and the colonizer come to co-exist in the one culture and indeed in the one individual; this after all is the nature of hegemony, and points to the problem of defining an "authentic" indigenous culture in the absence of its complete and utter segregation. Discussing originality, Shand argues that what matters is "what is consequential from the assertion of originality," with a gambit running from "strategic essentialism (original as exclusive and exclusionary . . .)" to "a principle of respect, consultation, and authorization . . ."

He points out the continuous risk to indigenous peoples of different "forms of colonial violence—physical, environmental, economic, and epistemic." His

position "looks to the retention of the philosophies, significations, knowledges, and strategies of indigenous peoples as being the key to any consideration of the cultural expressions of their making," showing how control over them is "an important site of resistance to colonial, imperial or, in recent years, global capitalist assaults." Moreover, "cultural resistance with respect to the arts is a means of retaining the strength and resonance of original voices and avoiding co-option into a dominant cultural ethos."

The question of indigenous rights to cultural property is part of the general question of the protection of folklore and traditional culture, as considered in the UNESCO's 1989 "Recommendation on the Safeguarding of Traditional Culture and Folklore" (Seitel 2001, 8-12). The Recommendation mentions intellectual property rights in passing, though it does not deal directly with issues of biopiracy. However, the participation of indigenous groups in the making of international legal frameworks is severely limited by the fact that such frameworks are usually worked out between representatives of states. Indigenous groups were thus refused admission to the decision-making sessions of various follow-up meetings to the Convention on Biological Diversity adopted at the 1992 Earth Summit in Rio de Janeiro, where state representatives monopolized the negotiations.

The UNESCO Recommendation acknowledges that "[w]hile living folklore, owing to its evolving character, cannot always be directly protected, folklore that has been fixed in a tangible form should

be effectively protected" (Seitel 2001, 9). It does assert that member states should "design and introduce into both formal and out-of-school curricula the teaching and study of folklore in an appropriate manner" (Seitel 2001, 10), but the dependence on member states to further the principles of the Recommendation reveals a key weakness when the traditional culture in question is that of stateless peoples.

Shand shows how these issues have been explored in New Zealand and elsewhere. The thorny questions of authorship, ownership, copyright, authenticity, authorization, and identity involved may never be satisfactorily answered. Still, the posing of these questions, and the legal formulations that try to do justice to them, are evidence of sincere attempts to move beyond Eurocentric models.

(ii)

If Hans Naumann could understand folklore as the copying of high culture in a debased form, high culture in turn can "copy" folklore, as indeed it always has. In any complex society high and popular cultures have always had a symbiotic relationship with one another that only extreme cultural relativist positions have sought to deny. Copying takes on a newer meaning in the modern age, with the development of industrial capitalism, increased competition in markets, growing commodification in ever wider domains of life, improved methods of mechanical reproduction, tighter legal and commercial definitions of originality—and all against a backdrop of greater social mobility, wider access to educa-

tion, and an increasingly democratic sensibility. The "authentic" domains of high culture and folk culture recede before a new popular culture that is a product of the new industrial and commercial worlds and owes much of its power—and its "inauthenticity"—to mechanical reproduction (cf. de Carvalho 1992, 27, 29).

The means of acquiring all cultural forms is imitation. The traditional apprenticeship to a master was a process at the end of which the qualified practitioner of a trade—and indeed, until the Romantic period, the artist—emerged. Everyone who has learnt a new language will remember the laborious imitation of the teacher. Before one can compose original sentences one must first imitate those of others. A similar process is an important part of the history of the acquisition of American popular musical forms in South Africa, as in other countries.

Carol Ann Muller's paper is an ethnomusicological study of the imitation of American music by the "coloured" inhabitants of Cape Town. European high culture provided a model for members of the coloured and African elite, whereas American popular culture appealed to other social classes. "While the state legislated to deny people of color citizenship in political terms, the media continued to embody a more democratic sensibility." In Cape Town the copying and covering of the foreign music led to what was locally called a culture of "carbon copies." The distinction Muller makes between the "carbon copy" and the "sonic mirror" is perhaps more apparent than real, more a question of early

and later stages in the assimilation of the new musical forms. American music was learnt in very modern ways—through radio, records, and films. This made it accessible to people who by and large could not read or write music, though they could and did write down the words of songs. The music reached a wide audience through live cover performances.

Muller clearly explains why coloureds should so assiduously learn this music the dissemination of which paralleled the extension of the political and commercial power of the United States. The music provided them with representations of people like themselves and offered "a kind of cosmopolitan citizenship, a membership in a truly imagined community of English-speaking, modern people of color," and it suggested "possibilities for freedom, if not its full achievement, and for racial and cultural equality." Another related reason, which Muller does not directly broach, is that modern urban society probably invalidated many of the models of folk culture while high culture was neither accessible to the popular classes nor relevant to their modern urban experiences. American popular culture, explicitly modern and with its seductively "democratic sensibility" that seemed to transcend the notorious inequalities of American society, showed millions of ordinary people a way to live in the modern city that they could identify with (cf. Schou 1992, 146; García Canclini 1993a, 68-69).

Muller does not discuss the question of appropriation as such: the fact that South Africans made their own of musi-

cal forms that initially were not theirs. The much more draconian copyright enforcement of today would probably have precluded the "carbon copy" culture of South Africa that was possible a generation or two ago. The "[p]eople posturing as 'Cape Town's own' Frank Sinatra, Doris Day, or Bing Crosby [who] brought these traditions to life" might have a legal case to answer.

(iii)

Philip Jenkins looks at repetition as a pathological problem. He explains the ideas of seriality and uncontrollable repetition as obsessive pathologies in modern society, examples of the irrationality that Protestants attributed to Catholicism or of the psychiatric diseases that are diagnosed by modern science. Citing the work of other scholars he shows how "the concept of serial killing is formed by an elaborate process of interaction between the ostensibly 'real' world of criminal justice and the 'fictional' realm of popular culture." He sees an archetypal figure given flesh and blood (in a manner of speaking) by a combination of sectional interests and a receptive public sphere (the latter largely articulated by the culture industries today as by oral tradition in the past). The interests involved were those of the FBI and particularly of its Behavioral Science Unit. They were served by the spectre of itinerant psychopaths at large who could not be combatted within the jurisdictions of state police forces alone. Jenkins shows that the notion of the serial killer was popularized in the 1980s and he sees the consequent fear being used by conservative political and moral agendas to

row back on the liberal gains of the 1960s and 1970s.

Jenkins argues that repetition is at the core of seriality, "and the inability to avoid seriality." He contends that "the idea of uncontrollable repetition has proven deeply frightening to many cultures because it denies the ability to choose that is central to free will." Still, his reference to myth does not follow through on the meaning of myth as sacred narrative, closely related to ritual. Repetition through ritual is at the core of religious systems and of communal identity. The relationship between myth and history is a sometimes explosive one, both through the reproduction of mythical archetypes over time—as in the shaping of historic lives by the heroic biography (see de Vries 1963, Raglan 1965, and Eliade 1971)—and through deliberate political appeal to them—the mythical reference in the name of Hitler's Operation Barbarossa gives chilling testimony to that (see Iesi 1993).

If one can speak of an interaction between the realms of criminal justice and of popular culture in the imagery of the serial killer, can one similarly speak of a relationship between an individual and an archetype? Mircea Eliade writes of what he calls "the mold of the archaic mentality, which cannot accept what is individual and preserves only what is exemplary." Thus events are reduced to categories and individuals to archetypes, and he points out that this is done almost to our own day (Eliade 1971, 43-44). The influence of the heroic biography on the lives of historical figures is one such example. In a number of celebrated cases from antiquity to the modern period

there has been a clearly political dimension to it, as when a series of individuals, often years apart, identified themselves with a lost leader who represented a heroic archetype. The most famous case is that of the Portuguese king, Sebastian, killed in battle with the Moors in 1578. Shortly after the battle, rumours of his survival came back to Portugal with the few boatloads of survivors. Over the next twenty years four false Sebastians appeared, causing disturbances and stirring up rebellion. At the beginning of the 19th century a sect of *sebastianistas* appeared and was opposed by the church. The tradition of "*o príncipe encuberto*," "the hidden prince," remained and was recorded in Brazil in 1838 (Caro Baroja 1979, 132).

Jenkins argues that the opposite of serial murder is "control, in self and society," and he shows the inverse relationship of the perversity of serial murder to the assertion of conservative values. But the notion of tradition itself, fundamental to conservative, if not only to conservative group identity, rests on the idea of repetition. As the Irish proverb has it, "*ná deín nós agus ná bris nós*" ("don't make a custom and don't break a custom"). Repetition is also a form of control and indeed of self-control—the following of rituals, the saying of prayers by the faithful, the observing of the Sabbath, the marching up and down of soldiers—that helps to structure life. Repetition is also central to oral, if not only oral, narrative. It is a central technique of the media, as is seriality: the soap opera and TV series were already prefigured in the nineteenth century publication of novels in serial form. The recent Washington

sniper case shows how 24-hour cable news coverage of the case—putting other stories into the shade for the best part of three weeks—played a major role in feeding public anxiety, despite the fact that the US crime rate is 26% lower than a decade ago ("24-hour news stokes nation's fear factor," *Chicago Tribune*, 11 November 2002).

Jenkins contends that serial murder made such an impact on public consciousness because of its "mythological connotations," arguing that the killer "fulfilled all the mythical roles of the supernatural night-prowlers of old." Straying from place to place, serial killers "lack any ties that could keep them in one place, any conventional sense of home or family" and "thus symbolize the failure of traditional ideals of community in modern America." Still, the more positive role of another figure distinguished by rootlessness, individualism, and violence as a central American symbol—the cowboy—could profitably be related to the question of the serial killer. According to Max Weber's sociological formulation, charisma, a special quality of an individual's personality setting him apart from others, was outside the domain of the everyday and opposed to authority, but tended to recede with the establishment of permanent institutional structures (see Morris 1987, 72). Jenkins suggests that the inadequacy of institutional structures was behind the FBI's promotion of the idea of serial killers. Is the serial killer a sort of cowboy who has outlived the frontier?

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From indigenous knowledge as the last frontier of capitalist exploitation to the Wild West-like criminal itineracy of the serial killer; from the appropriation of indigenous culture by dominant groups to the appropriation of American popular culture by oppressed groups; from imitation as compulsive pathology to conscious self-identification through imitation; from the copy as the rip-off to the copy as legitimate self-representation: reading the three papers raises a number of common questions despite the diversity of the perspectives. The authors of the three papers and the editors of *Cultural Analysis* are to be congratulated for the wideness of scope and for the keenness of analysis.

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