

## The Judgment of Solomon: Global Protections for Tradition and the Problem of Community Ownership

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Then spake the woman whose the  
living child was unto the king, for her  
bowels yearned upon her son, and  
she said, O my lord, give her the  
living child, and in no wise slay it.

1 Kings 4, 26

*Ihr aber, ihr Zuhörer der Geschichte vom  
Kreidekreis*

*Nehmt zur Kenntnis die Meinung der  
Alten:*

*Daß da gehören soll, was da ist, denen, die  
für es gut sind, also*

*Die Kinder den Mütterlichen, damit sie  
gedeihen*

*Die Wagen den guten Fahrern, damit gut  
gefahren wird*

*Und das Tal den Bewässerern, damit es  
Frucht bringt.*

But you, you listeners to the story of  
the Chalk Circle,

Learn the opinion of the elders:

That what there is should belong to  
the ones who are good for it, thus  
Children to the motherly, so that they  
may thrive

Wagons to the good drivers, so that  
they are well driven

And the valley to the waterers, so that  
it bears fruit.

Bertolt Brecht,

*Der kaukasische Kreidekreis, 1945*

In the absence of local knowledge, global judges depend on wisdom. King Solomon, ignorant of the history of the two rival claimants to a baby, was confident of the principle that mothers are naturally loving. Bertolt Brecht, revising the story, argued that the birth mother might not be the best mother, particularly when vested privilege made her overconfident of her entitlements. As a good communist, he mistrusted the Lockean tradition of possessive individualism that equates origins with ownership (Hafstein 2004a, 306). But as a good modernizer, he had global assumptions of his own. In the frame story to his *Caucasian Chalk Circle*, a Party representative helps two village councils to resolve a dispute over the possession of a valley. The goatherders who have made cheese in the valley since time immemorial agree to surrender it to an agricultural cooperative that has a plan to irrigate it for orchards, a more productive use of the land.<sup>1</sup>

Stalinist agricultural reality, in turn, tragically undermined Brecht's assumption that modernizing planners always know best (Scott 1998). In fact, judges' wise assumptions are often undone by historical outcomes. In this article I address a more recent debate over possession: who owns tradition? (Brown 2003; Rikoon 2004; Hafstein 2004a). I suggest that some of the assumptions of global advocates for local communities in current intellectual property struggles may be equally ephemeral.

I speak primarily from the experience of my own discipline, folklore. Since the history of commercially recorded music and more with the post-1960s growth of

a market for traditional arts, folklorists have repeatedly become involved on an ad hoc basis in disputes over the rights to a particular tradition. Many of these disputes impinge on copyright and other forms of intellectual property law (Cohen 1974; Jabbour 1983; Evans-Pritchard 1987). Others take place in the context of heritage preservation efforts. Folklorists were involved in UNESCO's efforts to establish model provisions for the protection of tradition in 1980 and again in 1989 (Jabbour 1983; Kirshenblatt-Gimblett 2004). With UNESCO's Intangible Heritage initiatives since 1972 and with the creation in 2000 of the World Intellectual Property Organization's Intergovernmental Committee (IGC) on Genetic Resources, Traditional Knowledge, and Folklore, folklorists have been participating more intensively as what John Kingdon calls "policy entrepreneurs" in global initiatives to protect local tradition (1995, 122–24). While we are, as Kingdon says, motivated by a sense that our expertise can contribute importantly to a debate that concerns us closely, some of us may admit that we also fit another of his categories, "policy groupies," eager to be where the action is. And in fact we are gaining a place at the table. Some of our colleagues sit on UNESCO's Intangible Heritage Committee, two representatives from the American Folklife Center of the Library of Congress serve on the U.S. delegation to WIPO, and the American Folklore Society and the Société Internationale d'Ethnologie et Folklore are accredited NGOs at the IGC sessions. Representatives of both of these societies along with individual folklorists (myself included) have had the opportunity

of informal exchange with members of the WIPO Secretariat, who have exercised an admirable determination to consider the perspectives of both scholars and local actors.

To date, a major emphasis of North American folklorists' advocacy has been the insistence that protection regimes should give control of tradition not to the paradigmatic political agent, the nation-state, nor to the paradigmatic economic agent, the individual. Rather, it is argued, folklore is created and therefore owned by communities. In consequence, initiatives should be designed to give communities control over the use of their traditions at the most grassroots level possible (Jabbour 1983; American Folklore Society 2004; Rikoon 2004). In this article I suggest some of the risks to be borne in mind as this generally praiseworthy insistence on local control moves toward implementation in policy.<sup>2</sup> My primary concern is with the emotional and political force of the idea of "community." Community is so powerful symbolically that we can hardly assess it empirically. I discuss the modern assumptions that foster global enthusiasm for community but impede understanding of its real dynamics. I ask how judges will recognize the authentic guardians whose right and duty it is to watch over tradition, and who, in turn, will watch the watchers. Finally, I suggest that the reification of tradition as community-managed heritage tends to undermine one of the most important uses of local tradition, the collective negotiation of intracommunity conflict—such that our global Solomons are likely to be called upon to judge more and more local disputes.

### Tradition and the Culturalist Moment

The care and feeding of tradition is a matter of pressing current concern to intergovernmental organizations, caught as they are between northern and southern nation-states and between multinational corporations and the wretched of the earth. I will refer in this article to UNESCO and WIPO, which may be taken as proxies for two cardinal approaches.<sup>3</sup> For UNESCO, with its language of "safeguarding" and "preserving" living cultural heritage, tradition is the baby of the Bible story, to be guarded and nurtured. For WIPO, with its language of "protection" from unauthorized third-party uses, tradition is Brecht's valley, to be developed for the collective good.<sup>4</sup> At the time of this writing, both organizations are strongly engaged in protective efforts. UNESCO is lobbying for member state ratification of its 2003 Convention for the Safeguarding of the Intangible Cultural Heritage. The WIPO Inter-Governmental Committee's Seventh Assembly in November 2004 discussed a draft of core principles and objectives for the protection of folklore, and the General Assembly has directed the Committee to accelerate the development of an international instrument towards this end.

Tradition, folklore, or intangible heritage, as one prefers,<sup>5</sup> is assumed to stem from and therefore to belong to "communities." The label of "community" is accorded by both WIPO and UNESCO to indigenous groups in the first instance and by extension to other minorities within and between nation-states (UNESCO 2003, 1; WIPO 2004, 12–13). Descent is assumed by default to be the

unifying basis of community, although religious and other principles of affiliation are secondarily acknowledged.<sup>6</sup> As a rule, groups represented as "communities" are comparatively isolated, subaltern, and not considered to be viable autonomous collective subjects. Indeed, "community" is in part a euphemism conferring dignity and value on groups in a negative position: it is a verbal gift from the rich to the poor. At the same time, insofar as the label implies a refusal of individualism, it distances its referent from modernity (cf. Bauman and Briggs 2003).

Folklore is assumed to be what communities have got amid all they have not got. It is both identity and resource, both baby and valley. Just as the nation-states of the nineteenth century built national cultures out of their folklore, so both new states and subaltern groups within them must make cultural capital out of their own. In the culturalist new world order, folklore also provides the face by which communities represent themselves and claim rights in the political arena.<sup>7</sup> Moreover, in a global economy full of consumers hungry for exotic experience, folklore is a cultural resource comparable to the natural raw materials on which poor countries have so often depended for export income (Yúdice 2003).

Both UNESCO and, within the context of folklore protections, WIPO have supported the insistence of developing countries that communities be allowed the free exercise of their tradition in an autonomous space, the boundaries of which should be breached neither by the unwanted invasion of foreign culture nor by the expropriations of foreign cultural

industries.<sup>8</sup> The first of the guiding principles proposed at the IGC's Seventh Session in November 2004 is "responsiveness to aspirations and expectations of relevant communities" (WIPO 2004, Annex I, 2). Elsewhere the document states that protection of tradition is not an end in itself, but intended to benefit communities (Annex II, 1). Throughout the WIPO Secretariat's documents discussing objectives, principles, and policy options for the protection of tradition, it is emphasized that, while protections are likely to be instituted by nation-states, they should be designed to reflect community practice and wishes, avoid interference with community-generated initiatives, and accrue advantage to the community above all other stakeholders. The UNESCO Convention, which privileges the cultural expressions themselves, nonetheless identifies communities as the makers and custodians of heritage (UNESCO 2003, 1) and prescribes that communities participate as fully as possible in safeguarding measures, again understood by default as the province of state actors (Article 11b; Article 15).

The developed countries are unlikely to put up much fuss. Letting communities earn money on their folklore is a relatively minor concession. It may smooth the way for the more controversial and economically more consequential debates<sup>9</sup> over "traditional cultural knowledge" (most urgently ethnobotany and medical practice) and "genetic resources" (both human and territorial).<sup>10</sup> In addition, giving the southern countries a stake in existing intellectual property legislation may conceivably soften resistance to a system that overwhelmingly

benefits the developed countries. This is of particular importance in light of the "Development Agenda" recently proposed by Brazil, Argentina, and other southern countries to the WIPO General Assembly, demanding a global rethinking of the intellectual property regime as an instrument for general economic development rather than the protection of existing interests (Proposal 2004). The North's culture industries, furthermore, depend upon diverse and renewable global cultural resources to provide the constant novelty that stimulates ongoing consumer demand. It is thus in their interest to give the makers of "authentic" and "indigenous" culture some incentive to continue to create; and this provision of incentive is of course the core justification of the existing intellectual property regime.<sup>11</sup>

The solution to global inequality, political and economic, has become "Let them eat culture." Culture is increasingly proffered as the bridge across socioeconomic divides and the oil to the wheels of globalization. If globalization painfully widens the gaps between us, world music gives us one beat to dance to—and it is, notably, the gift of the poor to the rich. For it is famously the poor who have rhythm: indeed, the ideology of modernity posits an inverse relationship between material and cultural wealth.<sup>12</sup> The individualist and rational-instrumental behaviors that foster capitalist development are imagined, in the newly revitalized Herderian tradition, to be inimical to the leisured communal environment in which authentic art emerges (Bauman and Briggs 2003).<sup>13</sup> Once the rich have all modernity can offer, how-

ever, they begin to hunger for authenticity too (cf. Bendix 1997; Cantwell 1993). This gives them an affective as well as economic interest in the poor and creates one domain in which the playing field is apparently more level, a compensation for the southern countries' manifestly inferior bargaining power in all other respects. With culture, for once, the poor have what the rich need and cannot produce it under conditions of forced labor.<sup>14</sup>

The projection of culture and community onto poverty has economic consequences that will in turn shape policy. Local culture has become sought-after raw material, extracted by multinational corporations for refinement into cultural commodity. As with the environment, the extent to which local culture is a renewable resource is unclear and much-disputed. The ideological opposition between modernity and authenticity suggests that the best culture is proper to a disappearing premodern world. The criterion of authenticity turns culture into a scarce resource and a rival good, creating competition to define one's own lodes as purer and deeper than those of other communities. Cultural hybrids such as world beat music and tourist art, which *are* renewable, typically command lower unit prices but are open to mass production and distribution, complicating the economic tradeoffs to be considered in "developing" a tradition.

Local communities recognize culture as their capital and seek to develop it themselves, arguing that they, not the multinationals, ought to reap the profits of their tradition. This position is endorsed in the WIPO draft policy objective (2004 Annex I, 2) of promoting "com-

munity development and legitimate trading activities." Local actors will thus compete with global ones to "develop" traditional culture, *but also with one another*.<sup>15</sup>

### Community Imagined and Lived

"Community" is the magic word around which consensus can take shape in international tensions over the uses of tradition. "Community" speaks to the moral concerns of the larger publics to whom policymakers must answer (cf. Evans-Pritchard 1987, 293, 295 n.8), indexing both the metropolitan romance with authenticity and subaltern demands for justice and agency. As advocates of local or subaltern interests present their case to global judges, they tend to idealize community in characteristic ways:

- Contrasting it to the competitive individualism of global capitalism, they typify community as solidary and economically disinterested.
- The representative anecdote of threat to traditional culture depicts a multinational corporation appropriating the creation of an isolated indigenous group. Community/noncommunity thus appears to be a clear binary. Consider, for example, the current WIPO draft's distinction between "exploitation" from without and "use" or "development" from within.
- Communities are spoken of as bounded individuals—a root metaphor that naturalizes the biologically-defined community—such that their traditions



are distinctive and indeed unique (Handler 1988; Magliocco 2004).

Folklorists are hardly immune to these rhetorical temptations, especially in the heat of activist struggles. But our accumulated disciplinary learning inclines toward a very different set of generalizations:

- Power relations exist within communities as well as between them. Small dense communities, especially poor ones, are usually places of fierce competition for scarce resources, including prestige within the group. Folklore is a key resource for intra-community politics. Folk performance is a means of cultivating prestige and other kinds of social power: performers (and their patrons) vie against rivals for the approbation of an audience.<sup>16</sup>
- Most cultural borrowing takes place not across great divides but between near neighbors, sometimes arriving by this process to a cross-continental reach (e.g. the Märchen). Such borrowing takes place even between supposedly isolated indigenous communities in regions such as the Amazon or the pre-colonial Northwest Coast (Boas 1927; Seeger 1987, 19–20, 133–34). In fact, most folklore is highly mobile (consider "Cinderella," urban legends, and hip-hop) and, one might say, designed to be so.<sup>17</sup>
- By extension, cultural creation does not take place within closed communities or under condi-

tions of consensus, but through competitive social exchange. Indeed, Steven Weber's description of collective creativity in open-source software development (2004) applies perfectly well to ballads, festival, and other "folk" forms, viz: simultaneous reworkings by multiple actors (a.k.a. "parallel distributed processing") in an open social network under conditions of publicity. Community membership and the status of individuals within the network are defined by participation. Competition regulated by community norms stimulates engagement and innovation (cf. Noyes 2006).

- Communities are not always defined by descent. Residential proximity and trade or political interactions provide other bases for culturally productive affiliation, and still more important for the production of self-conscious identities are voluntary or consent-based communities.
- Community is not a clearly bounded, objectively identifiable group of individuals. "Community" is a convenient label for the work of collective representation and action that emerges from the heart of a dense, multiplex social network (Noyes 2003a).<sup>18</sup> Networks perform themselves as bounded groups to serve collective goals, including the stabilization of their own fluid life; and this autotelic work is increasingly the work of community in modernity. Indi-

viduals, to be sure, pressure others towards collective action for a wide range of private purposes, and the internal play of power shapes any performance of community. Some social actors have far more investment in community than others; consensus on its importance and its definition tends to increase with an external threat.<sup>19</sup>

- Even folklore explicitly framed as a display of differential identity (e.g. costume, festival) is very similar from place to place within a given cultural area. Indeed, the folklore of difference is particularly inclined to formal uniformity (Bauman and Abrahams 1981; Lau 2000). The narcissism of minor differences plays an important role here: that is, boundary-keeping shibboleths are more salient than internal structural distinctiveness. Within European modernity, a code for signifying the local emerges such that all locals look rather alike.<sup>20</sup> The initial purpose of performing locality is to compete for attention from the state, although typically the performances assert simultaneous emotional resistance to dependency. The local may be understood as a modular form comparable to the nation, multiplying more intensely of late as the limitations of the nation have become more acutely felt. To assume that folklore's primary purpose is the assertion of local or group identity (as folklorists

sometimes do without thinking and as is implicit in both UNESCO and WIPO documents) is arguably ethnocentric and presentist.

### The Needs of Policy

If the historical moment of neoliberal globalization tends to promote an understanding of community as the nation-state in miniature, the needs of legal regimes will treat it as the individual writ large.<sup>21</sup> Convenient homologies lie to hand, straight from the Romantic version of modernity that shaped them both. Authenticity is to community as authorship is to the individual.<sup>22</sup> And, over time, heritage is to community as inheritance to the individual. The community may therefore, by analogy, be treated legally as the owner of tradition.

Although the WIPO documents recognize that authenticity is a theoretically problematic concept (WIPO 2004, 16), it is nonetheless invoked in the core principles for the protection of folklore (ibid., 16–17), and participating folklorists have not to date made loud noises in protest of this or about the comparable use of "heritage" by UNESCO. This should surprise us, given that both authenticity and heritage have been subjected to nearly forty years of energetic historicizing and critique within our field.<sup>23</sup> It can be surmised that tolerance of these concepts, as of the reification of community, is strategic essentialism on the part of folklorists forced to recognize where their bread is buttered ideologically and hoping that the gains in local agency to be achieved through these concessions will allow the term to be deconstructed later. Arguably,

accommodation to "folk" culture concepts (in this case those of an elite folk) is necessary to succeed as a culture broker.<sup>24</sup>

To understand these concepts and recognize their appeal is certainly vital; that is not the same as adopting them. I would rather suggest that it is dangerous to resurrect as policy what we have already buried as theory. Once our strategic essentialism has created legal realities we will be stuck with them—and it.

The problem lies in how community may be represented under modern legal and administrative regimes. Legal rights such as ownership can be held only by legal persons, whether "natural" (human beings) or "juristic" (corporations, states, and other constructed entities) (Martin 2002, entries "legal person," "juristic person"). In order to hold rights in tradition, a community will have to be represented as a legal person. As the metaphor implies, this legal person will speak in one voice and act as one entity.

For this purpose, an established representative body (such as a municipality or a tribal council) may be designated, or a new one created. In the case of already bureaucratized indigenous groups in developed countries, the assignation of ownership becomes legally straightforward. Individuals will derive rights from verifiable group membership. Whether an individual is entitled to practice and sell a protected genre of artisanal work, for example, may be determined by her presence in a tribal registry. In some cases this will entail the exclusion of persons of mixed ancestry or external ethnic origin, regardless of their mastery or acceptance by other practitioners of

the tradition (cf. Evans-Pritchard 1987, 291). Legal solutions require clarity and simplicity. Genetic ancestry being the most objective determinant of group membership, it is likely to be favored, and racist conceptions of culture are bound to be reinforced.

To be sure, representation could also take shape through self-governed bodies such as artists' cooperatives, although this kind of solution has been little-mentioned in the WIPO documents. Insofar as tradition is understood as the property of "communities" rather than practitioners—and certainly patrons and users are as vital to the meaning of a tradition as the makers—this sort of solution is precluded. In any case, the most probable lobbyists for protection of a tradition, in the case of UNESCO the default lobbyists, are nation-states, generally in cooperation with lower-level political units: it is therefore they who will control the protected resource.<sup>25</sup>

Once ownership of the tradition is established, responsibility for its management devolves upon the owner. In a further abstraction of "community," the representative body will typically delegate administration of the tradition to a designated bureaucracy, a.k.a. an "instrumental legal personification" such as a foundation or commission (Martínez-Alonso Camps and Ysa Figueras 2001). Both WIPO and UNESCO's Intangible Heritage process anticipate this move.<sup>26</sup> Thus the tradition that circulates within a fuzzy-edged network of variably positioned persons may in practice end up under the control of a twice-removed and very small subgroup, whose representative status is unclear.



### **Local Cultural Bureaucracy in Practice**

The quickest mother will get the baby. Once procedures are set in place for according ownership of tradition and designating representative bodies, those actors out to capitalize on local tradition will be ready to make their claims, as they already are with UNESCO and lower-level bodies according heritage designations. These are, of course, the actors most savvy in global matters and therefore, according to the ideology that justifies protection in the first place, the least "authentic."

For global judges have little knowledge of local realities, and will not themselves be initiating protective measures. There is no globally maintained and updated survey of world folklore that would allow international organizations to target those local traditions most at risk. Nor can they go out and seek culture-appropriate solutions on a case by case basis. The economic and human resources for ongoing global-local collaborations do not exist. Rather, as currently with UNESCO heritage designations, local actors will petition for recognition and put forward a plan for protection. Supervision from above, whether from global bodies such as UNESCO or the national governments WIPO expects to implement its provisions, will not be close, informed, or ongoing. Those actors who purport to represent the community are likely to be accepted as doing so, and their actions are unlikely to be scrutinized thereafter.

Thus the best-placed local actors will claim the tradition. They will furnish and run the administrative body with a relatively free hand. The predictable results,

in the aggregate, will be the further commercialization, corruption, and control of local traditions. All these will stem from the bureaucratic predilection towards intervention.

- **Intervention.** UNESCO will give the valley to the irrigators. That is, a tradition is not "protected" if its practitioners simply continue to do what they do. Rather, a plan for "managing" the tradition is a requirement for winning an Intangible Heritage designation. Moreover, even when UNESCO's eyes have turned elsewhere, the administrative body must justify its ongoing existence to the local public. This it does by the construction of threats, needs, and lacks requiring its intervention, and more generally by the show of activity (Edelman 1977). Once created, bureaucracies notoriously expand (Beetham 1987, 58).
- **Commercialization.** A bureaucracy seeks rents with which to maintain itself. With the dominant neoliberal preference for markets in lieu of public funding, commercializing the tradition offers a surer and larger return than a state subsidy. The more the bureaucracy expands (as per above), the more funding it requires. While commercialization is likely to increase overall, then, the portion going to artists and performers will be reduced by bureaucratic skimming of the cream.

- **Corruption.** The "instrumental personification," existing in theory only to implement the community's will, is in practice constituted of natural persons who are (and, naturally, should be) stakeholders and participants in the tradition. The stronger the institutional authority conferred on them, the more opportunities to advance their individual interests.<sup>27</sup>
- **Control.** The actors granted bureaucratic authority are likely already to possess some other kind. Depending on the situation, they will be some combination of senior men with traditional authority, elites with political authority, or entrepreneurs with economic power and the prestige of modernity—which in the present climate is charismatic authority of a kind. The resulting concentration of power is likely to foster the reshaping of tradition in furtherance of ideological goals.<sup>28</sup>

Is this summary unduly alarmist? The past few years have made me take alarm, so I offer an example, one that is of no particular transcendence and does not present the most difficult scenario, but is close to my heart and important to those involved.<sup>29</sup> I present it with pain and hesitation: I am criticizing the actions of people who have been kind to me, and in writing this I will make local enemies. But local divisions will be a consequence of this (literal) valorization of community when local tradition, the medium

of accommodation, is translated into economic resource, a basis of competition. Because this change is in process, I speculate about the future based on my knowledge of the past. I write with scanty details, as the facts are not easy to establish, and my purpose is to suggest the kind of thing that happens rather than to assess Berga per se.

#### **A Case: The Patum of Berga**

Some communities are better organized than others for claiming national or global notice, and may try to take advantage of this primacy to repress rival claimants to a valued tradition. In Berga many locals have long insisted that the fire festivals in other Catalan towns are "copies" of their festival, the Patum. This discourse of authenticity and plagiarism acquires new potential now that the city has successfully pushed to put the Patum forward as Spain's next candidate for a UNESCO Intangible Masterpiece designation and to trademark, at the city's expense, "the most distinctive elements" of the festival—a process now moving through the courts. The movers behind these developments will certainly be watching any WIPO initiatives closely. Though it is now certainly too late to suppress a rival of more than twenty years' standing, some people would have been thrilled to have had the legal grounds for attacking the fire festival of a larger neighboring city, Manresa. (Some would also still like to suppress certain "copies" of the Patum within Berga, small-scale neighborhood versions that have become very important to the social integration of new immigrants and other marginal actors.)

Young Manresans did indeed attend the Patum in large numbers in the 1960s and 70s when it was one of the few large street festivals tolerated by the Franco regime and had become a focus of political resistance. The restoration of municipal democracy in 1979 led to an explosion of new and "recuperated" festivals in the early 1980s, created by young activists who could now turn from the serious to the ludic and from resistance to the reconstruction of community. The Patum was a salient model for them in both its formal features and its social effects. As happened in many other cities, the creators of Manresa's Correfoc copied the Patum, but they also did extensive historical research on the lost festivals of Manresa. Above all, they invented new performances, based on the old common vocabulary of devils and dragons and fireworks but wittily incorporating both new technical possibilities and more recent local symbols. The current Correfoc is visibly related to the Patum and visibly not the Patum. Moreover, for centuries the lines of influence ran in the other direction, from the center to the periphery. Manresa had an elaborate Corpus Christi festival in the seventeenth century, and in that period there is every reason to suppose that Berga imitated Manresa's festival, as it demonstrably did those of Barcelona and other important cities. That is how traditional cultural creativity works. Communities do not create their culture *sui generis* from their unique soil: they select and combine forms in general circulation according to their possibilities and with a competitive eye on the creations of their neighbors.

Economic and political rivalry between local communities has been an important spur to collective creativity. In addition, social tensions within Berga have shaped the Patum (Noyes 2003b). The festival centers on a series of danced combats in which, despite nominal victors and vanquished, everyone lives to fight again. Its Turks and Christians, angels and devils, dwarves and giants, hieratic eagle and violent mule-dragon sum up four centuries of social conflict in Berga and continue to index in the present the principal coordinates of social difference: male and female, old and young, boss and worker, native and immigrant, submissive and rebellious. The festival's unity is one of dynamic tension and precarious accommodation. Historically, certain elements were imposed from above; others were forced in from below and won sufficient popular acceptance that they had to be tolerated by the authorities. Everyone has a point of entry into the festival, and everyday irritations are both expressed and surmounted within it. As the dances are endlessly repeated in the course of five days in which no one sleeps or stops dancing, fired by drink and drumbeats and the thick falling sparks of slow-burning firecrackers, pain becomes pleasure and divisions dissolve. Because of the festival's capacity for both representation and transcendence, every faction in the town is engaged in it; everyone's energies have been given to it. A Catalan proverb declares "we won't die united, but we'll die assembled," and the passionately participatory Patum is the festival expression of this principle.<sup>30</sup> The Patum is, in short, the collective perfor-

mance by which Berga struggles to achieve community; and community is all the more valued for being hard-won.

As in most small towns with a history of scarce resources, tension and mistrust within Berga are considerable. The multivocality and indirection of folk performance foster a delicate equilibrium, temporary but memorable enough to keep things going until the following year. The difficulty of this achievement increases and the sources of competition intensify when outsiders begin to pay attention to this local folklore. Now folklore presents political and economic opportunities. It creates opportunities for the community as a whole to improve its fortunes, but simultaneously offers opportunities for individual advancement. The intellectual who can interpret local culture to the metropolis in ideologically attractive terms, the artist who is singled out as a master, the patron who can claim to have preserved an age-old tradition for posterity, can all be taken up and celebrated by enthusiastic metropolitans with little local knowledge, and their self-representations are unlikely ever to be questioned.

In Berga in the early 1990s, a certain group of festival participants well-connected in City Hall created a foundation, a Patronat for the protection of the Patum: a festival with thousands of passionate adherents that is in no conceivable danger of dying or of losing its formal integrity. The governing junta of the Patronat and its "technical" personnel are not directly elected either by the citizens of Berga or by the performers in the Patum. Some are *ex officio* city council members and others are nominated.

Some heads of the *comparses*—the individual performing groups within the festival, in which participation has long been internally regulated by custom—have been nominated; others, with different views about the festival, have not been. The structure of rotation in office is not explicit. No outsider, however, has any reason to doubt that the Patronat represents the community: UNESCO is dealing with them, as are the Catalan Department of Culture and the Spanish Office of Patents and Trademarks.

The Patronat has been working intensely to promote the Patum as a tourist event, an agenda that has long been controversial in Berga. From the 1960s through the end of the 1980s public opinion ran strongly against it. Today the community is deeply divided, particularly among *comparsa* members. Thanks to intensive lobbying, the Patum is Spain's current candidate for the UNESCO designation of Masterpiece of the Oral and Intangible Patrimony of Humanity. In general, the population of Berga and the surrounding region are enthusiastic about this possibility. In some cases, their motives are economic.<sup>31</sup> The Patum is a major expense in the municipal budget, and both the city administration and many *comparsa* members expect better access to Catalan government subventions (which have indeed been forthcoming as far as the campaign itself is concerned) and even direct subventions from UNESCO.<sup>32</sup> Intertwined with the economic motive is one of local pride. There is a widespread sense that the festival deserves this prestigious international recognition; there is excitement at the possibility that local

perceptions and priorities might, just once, find not just national but international validation.

An important minority of the community, however, is not enthusiastic. They are some of the central Patum performers and some of the people most active in the transition to democracy in Catalonia. In the 1980s they were out to revive local culture after the dictatorship and to recover a sense of local control and autonomy. In that context, they participated in an earlier campaign to protect the Patum from external commercial influences. Now many of them feel the battle is lost, and that globalization will defeat them as Franco did not: the Patronat is rushing to turn them into what they swore they would never be, "an Indian reservation." (Noyes 2003b, 194, 276)

Their pessimism may not be justified, but the important point is that they are withdrawing their labor: they've stopped arguing and have on the whole retreated from participation in Berguedan public life. In a small, economically fragile community where the effort of all is needed to maintain local cultural and social vitality, some of the most talented actors have surrendered control to the bureaucrats. Moreover, these bureaucrats are, frankly, provincial, and their expensively produced cultural enhancements do not meet metropolitan standards of design, scholarship, museology, and so on. So the Patum may suffer locally without profiting globally.

The Patronat, on its side, has begun to use its arrogated powers for commercialization, corruption, and control. This is of course too violent a phrasing. Nev-

ertheless, the trademark registrations have to be paid for and the salary of the "technician," a historian whose job description is rumored to include "determining the true origins of the Patum," has to be paid. In addition to seeking subventions from the regional government, the Patronat has begun licensing commercial products such as t-shirts and champagne with its seal of approval. As the trademarks come into effect, they plan to take action against unauthorized commercial users of Patum imagery.<sup>33</sup>

The Patronat maintains physical control of the elements of the Patum. While one local ensemble's recording of the festival music is advertised on the municipal government's Patum website, another group of musicians—who have played for the Patum for thirty years, whose former conductor was a major figure in the musical history of the festival, and who, moreover, have good connections in Barcelona and the possibility of reaching a wide audience—were recently denied the use of the Patum's great bass drum for a recording. Permission to take out certain effigies and costumes for use in photographs is similarly rumored to have been denied to more than one rival of the photographer allied to the Patronat. To be sure, the Patronat's photographer owns the best-equipped and longest-standing studio in town, which by virtue of its archive alone takes the inevitable lead in Patum documentation. But as Lessig observes in another context, the status quo is being reinforced by giving the existing commercial leaders the authority to decide the terms on which their competition will be admitted (2001, 212–13). The exclusion of the



established musicians is more egregious. In this case a longstanding rivalry of the kind that has always energized the festival has had its stakes raised. As the Patronat supports one side and the other develops alliances in Barcelona's folk music community, the rivalry becomes more institutionalized, less interactive, more a question of separate spheres, and this also will tend to diminish the face-to-face creative tension that has kept the festival vital for four centuries. In general, there is at least a strong appearance of contradiction between the Patronat's actions and its explicit agenda of promoting the festival through quality local cultural products.

Social control is a further question. The Patum has served as a vehicle of intense political and class contestation from its emergence in the seventeenth century. It has also served, since the first period of large-scale immigration in the 1950s, as a means of incorporating new Berguedans into full community membership. The members of the Patronat stem from the "respectable" wing of Patum opinion, and in many incidents over the years this wing has attempted to control participation with a view to controlling the Patum's potential for shaping social change. There are indications that this control, while far more discreet than the commercialization, is part of the Patronat's agenda. For example, recently a system of "points" was created for designating the festival administrators, an honorific office accorded every year to four newly married couples. Among other things, points are given for having been born in Berga and having been married in church. In a city

with a large immigrant population and in which the working class is historically anti-clerical, these are highly divisive criteria.<sup>34</sup> People murmur—there is as yet no evidence to substantiate the murmurings—about intentions to interfere with the *comparses'* control of their membership; they speculate about the development of a lottery system comparable to the one instituted in the 1990s to allot places in the Children's Patum, a far more domesticated event that, for many, foreshadows the shape of things to come. Furthermore, the Patronat's explicit interpretations of the festival and insistence on its character as a survival from time immemorial deny its contestatory elements, a strategy that was necessary during the Franco regime but resonates differently today. Although they overstate the case, many locals believe that the Patronat intends to take a living festival and freeze it into heritage. Such fears become self-fulfilling prophecies, fostering the disengagement of those actors who feel excluded. In fact, my observations of the most recent years suggest that the festival is becoming at once more liturgical in execution and more "lite" in feeling.<sup>35</sup>

Many aspects of this situation are not new, merely enhanced by the higher stakes of UNESCO and trademark law. In Europe the provincial intellectual who articulates local tradition for and with the state has been an important figure since at least the early seventeenth century, and tradition marked and marketed as local has long been an important economic resource for even the humblest social actors (Jeggle and Korff 1986). But under globalization the phenomenon

has burgeoned; cosmopolitan artists and intellectuals who can claim to represent an exotic local culture may do extremely well for themselves (Franco 1988; Gabilondo 1999).

The rivalries between local communities for metropolitan attention are of equally long standing, and in Iberia the center has conferred commemorations on the periphery for its preservation of traditions since the late nineteenth century. Under the Franco regime, declarations of "Fiesta de Interés Turístico" multiplied as the tourist economy boomed; after 1979 the Catalan government assumed control of this designation within the region, now purified or perhaps euphemized as "Festa d'Interès Nacional." One ethnologist who has served on the Generalitat's committee noted the problem of the designation's politically-driven proliferation and consequent devaluation; the UNESCO Intangible Heritage process, she observed, will reproduce the problem on a global scale (Josefina Roma, personal communication, June 2004; cf. Kirshenblatt-Gimblett 2004).<sup>36</sup> The Patronat's historian has ignored compelling arguments for the nineteenth century fabrication of a supposed medieval document, speaking without qualification of the Patum in the fourteenth century, and also argues strongly for the persistence of pre-Christian elements in the festival, on what is necessarily shaky evidence. This insistence on continuity since time immemorial is part of the need to construct the Patum as unique among Catalan festivals, and as such it is a legitimization device common to localities throughout Europe and dating from . . . time immemorial.

For the conservative discourse of authenticity, used in this case by both the Patronat and its critics (myself included), is not exclusive to the modern nation-state and elite actors. On the contrary, the provincial intellectuals who made the nation-state are those most deeply invested in it as a discourse of value. Everyone who controls part of a valued tradition resists changes in it as potential threats to his or her own position; everyone sees the present realization as a falling-off corrupted by the times; and the actors who denounce change most vociferously are of course the same ones involved in the promotion and instrumentalization of the tradition.<sup>37</sup> The authenticity discourse has long been so prominent an elite framework for the Patum as to be widely parodied: "Accept no vulgar substitutes," the carriers of the Patum mule told my American husband as they poured *barreja*, a potent mix of anise and muscatel, down his throat from their leather flask. To be sure, from the 1960s through the 1980s the point was to resist commercialization; now it is to protect the brand. To counter the powerful anticonsumerist and isolationist position still held reflexively by many Berguedans, the Patronat's historian has recently reminded the public of the festival's long-standing attempt to attract outsiders, without commenting on the most recent and vigorous phase of this promotion during the dictatorship (Rumbo 2004). Suddenly, and for the first time in the festival's history, tourism is authentic.

Finally, accusations of secrecy and mishandled funds are a routine part of life in Berga: there is a longstanding cul-

ture of mistrust. If the Patronat were not accused, others would be: indeed the *comparsa* of the devils has long been popularly understood to sell off performing rights, although I know of no verifiable instance. "L'enveja . . .," they lament: envy rules. But it exacerbates rumor and suspicion to have extralocal authorities involved. Not without foundation, Berguedans take for granted a high level of corruption in both the Catalan and the Spanish governments, and the UN is of course not immune to such perceptions. After centuries of abuses and exploitation, the culture of democratic trust is precarious—Spain being anything but unique in this regard. For debate and decisions to carry any legitimacy in such settings, they *must* be public. With the creation of the Patronat, matters that would once have been addressed in municipal plenaries have gone behind closed doors and, more importantly, matters that would have been resolved in everyday practice and been communicated through the ordinary gossip network have also gone behind closed doors. Gossip becomes more aggressive, beating at the doors, when its access to information is reduced.

### Aftermath

Extrapolating from the situation in Berga, I predict that when the government of tradition is wrested from informal negotiation between competitive actors to formal administrative bodies, certain consequences may be anticipated:<sup>38</sup>

- The displacement of conflict from the tradition itself to its conditions of practice. That is, rather

than working out difference within the codes of the tradition, through the manipulation of symbols, performance style, and so on, the performances themselves will become increasingly fixed and conflict will take place over personnel, scheduling, audiences, etc., or more generally over equity and ideology in administration. In consequence, the density of meaning within the tradition and its level of integration with ordinary life will fall off.<sup>39</sup> (A telling cartoon in 2004 depicted the Patum effigies up in the mayor's balcony as spectators to the crowd event below.)

- The withdrawal of some actors, either from alienation or in order to prevent conflict within a valued tradition ("give her the living child and in no wise kill it"). Contrarian characters, who for some reason find themselves at odds with their surround, often find a social place within the practice of tradition that they cannot find within institutions, and give traditions much of their vitality and critical edge, as well as gaining a socially constructive outlet for their energies. They are the first likely to withdraw. Apart from the more general negative social effects of such withdrawal, a lessening of engagement and of innovation within the tradition may be expected.
- Fragmentation. Some will retreat to set up competing practices in a differently defined framework. The multiple rival versions of the

tradition, refusing the ambiguities that foster coexistence, will become increasingly explicit and monologic. The tradition as a whole may lose richness, flexibility, and integrative capacity.

- Potentially an increase in social conflict. Not only contrarian characters but also socially dangerous groups are key figures in public traditions. European peasant communities made young men the guardians of tradition, a way of channelling their volatile energies to useful ends. Young men performed the *charivaris* and the mummers' plays. Still economically and to some extent sexually excluded today, young men are, as ever, the most probable recruits for extremist groups. In twentieth-century Berga the most disenfranchised members of the working class supplied certain *comparses* in the Patum, giving them protagonism and a stake in collective life. More recently, in the neighborhood Patum del Carrer de la Pietat, frowned upon by many defenders of authenticity, young immigrant men of the kind feared by teachers have been taking a lead in the *comparses* and can be seen caring for the effigies and teaching young children how to participate. The bureaucratization of participation may bar those who benefit most from it and increase an existing sense of exclusion.

In Albert Hirschman's terms, we may expect an overall move from the political strategy of "voice" to the economic strategy of "exit" (1970). That is, those excluded from the decision-making process will not argue but detach themselves from the tradition. Both cultural coherence and social cohesion will be damaged by such a process. I repeat: The Berguedan situation is not earthshattering, saddening as those involved find it; these are prosperous Europeans with other resources beyond folklore. But it suggests what can happen in more contentious and vulnerable communities.

### Conclusion

If we are not careful in defining what we mean by community control, instead of King Solomon we will end up with Brecht's Azdak. Raised up over his fellows by an inattentive central authority, this local judge is by turns corrupt, compassionate, arbitrary, and inspired. Azdak will be a change and perhaps an improvement on Solomon; if nothing else, the process will bring grist to the ethnographer's mill.

But I would urge us—and WIPO—not to be too hasty. To assume that glaring inequalities and compensatory identity politics will be with us forever is one way of perpetuating them (cf. Magliocco 2004, 235). Before we create instruments that, once adopted, cannot easily be changed, we should carefully consider alternative frameworks to that of heritage/authenticity/community. *Zeitgeists* come and go, but bureaucracy is forever. "Let them eat culture" should not be engraved on its portals.

More generally, I propose a maxim for our field as we negotiate the temptations inherent in winning a place at the table and having at last some power of advocacy. *Good policy cannot be made from bad theory.* The rapidly increasing stranglehold of intellectual property law, which benefits corporate owners in the short term but stifles innovation in the long term by creating huge disparities of access, shows us one example of the destructiveness of inflexible regimes. Formalized from a conception of authorship peculiar to Western modernity, existing intellectual property law cannot capture the cumulative and collaborative character of creativity even in literary texts, much less technological processes or jazz music. But we will not correct the conceptual flaws of author-based IP law by adding to it a conceptually flawed special regime for communities (cf. Bauman and Briggs 2003, 307–308). Rather than adding Ptolemaic circles to an obsolete cosmology and so increasing its inertia, those of us interested in traditional creativity should be involved in the experimentation with new formulations and the global rethinking of intellectual property regimes. A burgeoning movement among alternative globalizers proposes a revival of the commons as an alternative.<sup>40</sup> Other critics advocate a period of experimentation and the pluralization of governance regimes according to the nature of the resource (e.g. Lessig 2001, Brown 2003). Regardless, it is high time for the so-called residual to join hands with the so-called emergent in the revision of the modern.<sup>41</sup>

It should be understood that I am not

in the least dismissing the goals of building solidarity, respect, and recognition between North and South, or the very real contribution that cultural exchange can make towards this end. But I believe that successful imagined communities, local or international, must be built upon stable social foundations. Recognition is no substitute for equality; heritage is no substitute for autonomy. To institutionalize traditional cultural production as distinct from other kinds, necessitating a regime of its own, is to create separate and anything but equal access to the knowledge economy.<sup>42</sup>

This is not to lead us back to neoliberalism. Like all binary oppositions, that of liberalism and communitarianism blinds us to alternative constructions of the problem. Both ideologies rely on a dubious modern epistemology that "entitizes" its objects, attributing the integrity, fixity, and boundedness that commonsense perception confers upon material things to the sociocultural constructs of the individual, the community, and the nation-state (Handler 1988). The newly fashionable network model, although no doubt it will prove to have problems of its own, gives us an alternative framework for experimentation and a starting point for more flexible thinking.<sup>43</sup> Nor does deconstructing community force us into poststructuralist indeterminacy: there is a longstanding tradition of empirical network analysis that holds up to scrutiny rather better than most assertions of bounded community (e.g. Lipp 2005).

This is a moment of great importance to the field, both for our deepest commitments and for our advancement as a



profession. All the more reason for caution. Folklorists once put a human face on nationalism; we're in danger now of providing the same service for globalization. We need to stand back a little from identity politics and put first things first. For ourselves, that means the primary research which is the foundation of our credibility as advocates. For the makers of traditional culture, that is the material and existential security in which humane cultures take shape. Where there is economic and political agency, culture can take care of itself.

#### A Double Coda

*June 2005.* This article was drafted prior to the 2005 Patum, eagerly promoted as "Candidate for Masterpiece of the Oral and Intangible Patrimony of Humanity." After this Patum, local realities have for the time being displaced UNESCO dreams in public attention.

Berguedan anarchist and alternative collectives, populated by young people of Catalan-independentist tendency, sponsor an increasing number of activities on the fringe of the Patum—an instance of the tendency toward a more fragmented social creativity.<sup>44</sup> On Friday May 27th, the middle night of the Patum, a concert sponsored by these organizations was violently interrupted by a group of young men of diverse immigrant origins and generations. All of the 18 later arrested are resident in Berga, and all, according to vociferous local opinion, are habitual disruptors of public life, in several cases with long criminal records. Two concert attendees received knife wounds, and one, a dancer in the *comparsa* of the New Dwarves of

the Patum, was killed after multiple stabbings. This unheard-of public violence, cutting into the heart of the community, received Spain-wide media coverage and has traumatized the city. After two weeks, multitudinous protests gave way to painful and, in a small city, unavoidable daily face-to-face confrontations between police (accused of slow response), long-assimilated immigrants and ethnic Catalans (whose generational disagreements have for the moment been elided), and the accused and their families, with other immigrants caught in a tense interstitial position.

The crisis has brought into relief the gradual collective retreat from street life and the consequent erosion of everyday social control, along with the emergence of distinct youth subcultures at odds with the police as well as one another. Calls for *convivència* and dialogue are meeting with powerful emotional resistance on all sides. In short, underneath the dramatic disruption of Berguedan imagined community in the Patum lies the slow dissolution of community's base as a dense network of interaction. It is too early to tell whether this tragedy will influence public opinion to revive the understanding, so generalized in Berga in the 1970s, that the Patum is more valuable to the community as a vehicle of local social accommodation than as an item in the global cultural display case.

*March 2006.* The question is now moot. In the months after the killing of Josep Maria Isanta, the Platform for *Convivència* in the Berguedà, a coalition of civic organizations, energetically organized demonstrations, raised money, assembled a website, and made declara-

tions. In the course of the autumn the coalition fell apart, with factions accusing one another of politicizing the discussion, while street life in Berga remained tense. In the meantime, on November 25, 2005, the Patum was named Masterpiece of the Oral and Intangible Patrimony of Humanity by the Director-General of UNESCO in a ceremony in Paris. "Where do we pick up the check?" quipped one of my Berguedan friends. The Catalan media coverage emphasized the regional triumph: "The Patum defeated flamenco" (Uriá 2005). (To be sure, the Patum now appears throughout UNESCO's website and publicity materials as "the Patum of Berga, Spain": one has to delve deep into the site to find the adjective "Catalan.") UNESCO's blurb explained the threats justifying the festival's protection:

The continuity of the celebration seems to be ensured. The Patum of Berga is however threatened by transformation, distortion and loss of value in a general context marked by strong urban and tourist development that tend to reduce the Patum to a mass phenomenon. These factors risk denaturing the Patum ritual by encouraging its organization in areas and at dates that are not authentic. Moreover, the hundred year-old Patum figures that require care and restoration by artisans who possess specific secular knowledge and know-how, risk being replaced by modern replicas devoid of all artistic and historical value. (The Patum of Berga 2005)

Protection on the ground looks rather different. Safeguarding the authenticity of the Patum figures: this matter has cre-

ated a series of minor crises in the years since the Patum declared itself a candidate, for the local people who have always done repainting and minor repairs lack academic credentials in restoration and are no longer allowed to do the work. Preventing Patums out of season: on the day after the UNESCO proclamation, the Patronat held a meeting to discuss holding an extraordinary Patum for Berga's December patronal festival in order to commemorate the designation; this proposal was defeated by one vote following tense and prolonged debate. The dangers of increasing touristic development: the news stories announcing the award explained that the designation would help to realize the city's plan to create a 4,500-square-meter "Guggenheim-style museum" (Rosiñol 2006).<sup>45</sup> The director of Catalonia's UNESCO office, Agustí Colomines, was at least somewhat conscious of the ironies. "You can be sure that from this day on you'll have an avalanche of tourism: be careful it doesn't spoil the festival," he warned Berguedans (*ibid.*).

Or maybe not. The Patum was one of 43 winners out of 64 candidacies in 2005, almost equalling the 47 total designations awarded in 2001–2003, a rush to divide the spoils of a vanishing system of distinction. The 2005 proclamation will be the last. On January 20, 2006, Romania became the thirtieth nation-state to ratify UNESCO's Convention for the Safeguarding of the Intangible Cultural Heritage, thus bringing it into force (Convention 2006). The list of Masterpieces will now be replaced with a Representative List of the Intangible Cultural Heritage of Humanity, the criteria for which

will be determined by an intergovernmental committee constituted by representatives of the signer nations, of which Spain is not as yet one. It is expected that only those Masterpieces from the signer nations will be transferred to the new list (Valdimar Hafstein, personal communication, 26 January 2006)

For the city's patron saint's day festival in December, there was no extraordinary Patum, but a Mass by a local composer adapting music from the Patum was premiered and the Dance of the Eagle was played in the main square with a small fireworks display—familiar instances of a civic liturgy of the Patum which began with the festival's first self-conscious projection to outsiders in the 1890s (Noguera 1992). The latest hubbub, in March 2006, has come with the disappearance in the Spanish ambassador's diplomatic pouch of the UNESCO certificate of the Masterpiece designation. UNESCO has promised to send within two or three months a replacement which will be "just as authentic" as the original; this will be displayed in the "remodeled municipal museum," no longer spoken of as a Guggenheim in the making (Perden el diploma 2006). As with many of Berga's serial investments in the *deus ex machina* of the moment over the years, the UNESCO adventure seems for the moment to have fizzled—though the Patronat, of course, remains. This is the way folklore ends: not in catastrophic loss but in slow self-estrangement; not with a bang but a whimper.

### Notes

Earlier versions of this paper were presented at the 2004 American Folklore Society Annual Meeting in Salt Lake City and as the Laura Bolton Distinguished Lecture in Ethnomusicology at Indiana University in April 2005. Thanks to the audiences at those presentations and to Roger D. Abrahams, Lluís Calvo i Calvo, Valdimar Tr. Hafstein, Jason Baird Jackson, Elliott Oring, Tok Thompson, Srdjan Vucetic, and Bill Westerman for their insights, too rich to be fully incorporated here. Thanks above all to the people of Berga for their longstanding and generous tolerance of my presence in their collective life. Research was supported by the Mershon Center and the College of Humanities of the Ohio State University.

<sup>1</sup> It is worth noting that in this play the traditionalists are persuaded to surrender their land by means of a staged performance of a traditional narrative sponsored by the modernizers. "Heritage" at work.

<sup>2</sup> Compare Shuman 1993 on the essentializing of the local. My specific concerns as to "who will judge" and the dangers of assuming that the only tensions are local-global were anticipated by Jabbour (1983, 13–14)..

<sup>3</sup> For broader imbrications of traditional culture in policy spheres, see Kirshenblatt-Gimblett 2004 on trade policy and Rikoon 2004 on human rights.

<sup>4</sup> For the distinction between "safeguarding/preservation" and "protection," see WIPO 2004, 12

<sup>5</sup> Each of these terms is notoriously problematic, the last one so much so that I am unwilling to use it. UNESCO and WIPO both recognize the difficulties of terminology; for convenience they have resorted, respectively, to "intangible cultural heritage" and "TCEs/EoF," that is "Traditional Cultural Express-

sions/Expressions of Folklore." For my own convenience I will refer to "tradition" or "folklore" without bothering to clarify the definition: it is precisely its lack of clarity that sends policymakers back to default assumptions (see, however, Noyes 2004, and for the UNESCO-WIPO definition see UNESCO and WIPO 1985). As with the U.S. government's definition of pornography, it's enough for the present purpose that we all know folklore when we see it.

<sup>6</sup> In WIPO's case the citations justifying this inclusion come from the American Folklore Society and other such sources. Since the 1960s, American folkloristics has sought to undo the traditional/modern divide through the famous definition of a folk group as "any group of people whatsoever who share a common factor" (Dundes 1965, 2). But this runs directly counter to the efforts of indigenous groups to transvalue their ascribed exceptionalism and make it the basis of rights claims. Indeed, the broadest definition of "folk" sits uneasily with identity politics, for when all are communities and all have tradition, then claims of uniqueness calling for special protections become at best devalued, at worst inadjudicable. We need to begin to discuss seriously whether or not some communities are more equal than others.

<sup>7</sup> Culturalism, that is, the use of culture as an explanation for and legitimation of political and economic difference, has been much discussed of late, particularly in relation to Samuel Huntington's "clash of civilizations" thesis. A good sampling of culturalism in U.S. policy circles may be found in Harrison and Huntington 2000. For large-scale accounts and critiques of the culturalist turn from a variety of perspectives, see Handler 1988; Kuper 1999; Al-Azmeh 1996; Benhabib 2002; Yúdice 2003. For culturalism as it affects folklorists most directly, Kaschuba 1999.

<sup>8</sup> To be sure, such violations are envisioned

as coming from outside state boundaries. The relationship of the state to its communities is less often problematized, cf. Kirshenblatt-Gimblett 2004; indeed the African countries in the most recent IGC meeting insisted strongly on the role and rights of the state in administering local tradition (Hafstein 2004b, 10). In WIPO and UNESCO documents as a whole, states are generally understood to be aligned in interest with communities rather than in potential opposition to them.

<sup>9</sup> My colleague David Huron suggests that this is a mistaken assumption: the music industry in the US is as big as the pharmaceutical industry and entertainment is of course a leading US export.

<sup>10</sup> The presuppositions inherent in the IGC's grouping of genetics and tradition speak for themselves. The distinction drawn between folklore and traditional knowledge (which, needless to say, is theoretically unacceptable to folklorists, as well as to certain state delegations) is between aesthetic and practical activity. Religion is included with the former.

<sup>11</sup> Playing off Sigmund Freud's reading of the Solomon story (cf. Freud 1966–1974, v.18, 121), Elliott Oring suggests that a deep envy drives the growing western willingness to incorporate traditional culture into IP regimes. Our baby is already dead; why should not the south also have theirs sliced up into partible commodities?

<sup>12</sup> Note that I am referring to culture not in the Arnoldian but in the anthropological sense, which dominates the culturalist discourse.

<sup>13</sup> To be sure, the scales can tip back again and modernity itself be recuperated as culture: in what seems an inevitable pattern of ecological succession, heritage is replacing industry in a variety of Western regions.

<sup>14</sup> But this poses a real problem of sustainability. Although the North continues to imagine Southern poverty as underem-

ployment that leaves plenty of time for dancing under the palm trees, the reality is increasingly of long hours in brickworks, maquiladoras, and sweatshops, which leave minimal space for sustaining personal existence, much less complex cultural creation.

<sup>15</sup> The current WIPO draft foresees difficulty with rival claimant communities but not rivalries or competition within communities (2004, Annex II, 18).

<sup>16</sup> The performance approach strongly emphasizes the achievement of honor and reputation through oral performance, e.g. Bauman 1986. To be sure, much folkloristic research has argued that such competitive performance is typical of high-ranking men, and that strong patterns of reciprocity and cooperation may be found in the traditions of women, working classes, and other subalterns. But one generalization is at least as defensible as the other, and the traditions likely to be visible and of interest to an external audience are often the most performative and competitive: the most politicized.

<sup>17</sup> On the current neglect of the diffusionist tradition, cf. Magliocco 2004, 234. On how texts are constructed for mobility, see Bauman and Briggs 1990 and Silverstein and Urban 1996.

<sup>18</sup> "Multiplex" refers in network theory to multi-stranded social relationships, for example a friendship that develops between coworkers who also share the same religion.

<sup>19</sup> This is the understanding that underlies my use of the word "community" in the rest of this article, where for want of a better term I will follow everyday usage in applying the word to dense multiplex networks, usually place-based, in contexts where they are acting as or recognized as communities. Although this fuzziness is analytically regrettable, network and group image cannot conveniently be separated. Communities are not sustained in imagination without lived in-

teraction to give them emotional and cognitive support, nor do networks stabilize and reproduce themselves without common imagery to focus them. As with "folklore," the concept of "community" derives its social power from being both ambiguous and unavoidable.

<sup>20</sup> Cf. Bendix and Noyes 1998; Hofer 1984.

<sup>21</sup> There is of course no contradiction, only a differentiation of levels. Beneath both the nation-state and the individual-proprietary regime of modernity lies the ideology of individualism described in Dumont 1986.

<sup>22</sup> Cf. Feld 1994, 273, on the covert linkages of copyright regimes and authenticity discourses: economic and curatorial control are aligned in world music.

<sup>23</sup> Bausinger 1966; Hofer 1984; Handler and Linnekin 1984; Evans-Pritchard 1987; Bendix 1997; Kirshenblatt-Gimblett 1998.

<sup>24</sup> Bendix, however, protests the tendency (1999, 215).

<sup>25</sup> In some cases in opposition to traditional artists within their own nation. Ghana recently updated its copyright law to nationalize all folkloric expression, claiming to follow WIPO's recommendation in so doing. One clause imposes "a fine, jail or both on any Ghanaians who commercially use, sell, or distribute Ghanaian folklore or translations without Government's permit" (Expert Criticises Copyright Bill 2005). This regulatory process is, to put it mildly, unlikely to encourage local entrepreneurship or further national economic growth.

<sup>26</sup> UNESCO/WIPO 1985; WIPO 2004, 8 and Annex II, 20.

<sup>27</sup> While WIPO will not be dispensing money and UNESCO does so in a limited way, both will be providing means for the reconstruction of local traditions as resources for development. The extensive literature on corruption and development might therefore suggest ways in which not to repeat the mis-



takes of the past. In addition, much may be learned from the first large-scale bureaucratization of local tradition for commercial purposes, the ever-expanding system of controlled-appellation designations in European wine and food.

<sup>28</sup> Jabbour 1983 and Kirshenblatt-Gimblett 2004 note this problem particularly in the relationship of indigenous groups to national governments: there is a strong potential for "power grabs" (Jabbour 1983, 14).

<sup>29</sup> For a similar case of longer standing, see Scher 2002. This article came to my notice after I had drafted this one: it anticipates me in raising the problem of local representation and appropriation from within. See also Silverman 2005, 7–8; Brown 2003, 18–21.

<sup>30</sup> Literally and more wittily, "no morirem units però morirem reunits."

<sup>31</sup> For example, over ninety percent of bar owners are in favor (Espelt 2004, 25).

<sup>32</sup> In contrast, the tour guide at a UNESCO World Heritage site in southern Catalonia shook her head over the effects of the designation and told me, "Molta norma i poca pela." (Lots of rules and little money).

<sup>33</sup> A first action has already been taken against a winner of the poster prize who then put the design on a t-shirt. In this case the norms of the contest explicitly stated that the designs would remain property of the municipality, but several Berguedans nonetheless took delight in wearing the "contraband" t-shirt during the 2004 Patum, in protest of the trademarking ventures.

<sup>34</sup> They also break with recent tradition. Since the mass immigration from Southern Spain in the 1950s and 60s, the Patum has served as a crucial vehicle of integration and been celebrated as such by local authorities (Armengou i Feliu 1994, 124).

<sup>35</sup> The word in Catalan is "*light*," usually written in italics and derived from the product marketed in Spain as "Coca-Cola Light."

In the 1980s the term was more often "descafeïnat" (decaffeinated), similarly derived from American commercial influences.

<sup>36</sup> A comparable devaluation of the controlled-appellation designation for European wines has resulted from its overextension (Robinson 1994, entries "Appellation Controlée" and "Denominazione d'Origine Controllata")—although it can be argued that in the long run the system has raised quality overall.

<sup>37</sup> Cf. Noguera i Canal 1992 on the "potentiation" of the Patum in the late nineteenth century. I came too late upon Herzfeld's intricate discussion of the close link between culturalism and bureaucratization to incorporate his argument into my own, but particularly germane here is his assertion that the reification of tradition as culture entails its loss as social practice; to wrest it back requires a powerful struggle against the inertia of institutional categories (1992, 182–183).

<sup>38</sup> I do not address here the more general effects of freezing the tradition process as heritage, a theme sufficiently covered in the literature. To summarize them: You can't have your folklore and eat it too.

<sup>39</sup> Thanks to Roxann Wheeler for helping me to articulate this point.

<sup>40</sup> It is surprising that, with the exception of Mary Hufford (2000), few folklorists have as yet looked to the commons as an alternative model of governance, nor paid attention to the intensive sociocultural innovation taking place under the aegis of the "creative commons" ([www.creativecommons.org](http://www.creativecommons.org)).

<sup>41</sup> Folklorists can help by documenting social processes in a wide range of traditions and considering how they might be abstracted into flexible ideal types—for if concerns about reductionism make us hesitate to build models ourselves, we will have to live with models made by others. For the next step, translating ideal types into models of policy, we can learn from the example

of open-source software; as Barbara Kirshenblatt-Gimblett has long urged us, we should be in conversation with this field. For experiments in formalizing the governance of the open-source creative process and the distribution of use rights, see Weber 2004.

<sup>42</sup> See Briggs and Mantini-Briggs 2003 for how the best-intentioned categorical protections can blind professionals to the actual needs of a given group of social actors.

<sup>43</sup> Ultimately, of course, we may need to think about tradition as both wave and particle.

<sup>44</sup> The quarterly broadsheet of one of these collectives is, incidentally, to my knowledge the only public medium ever to have expressed disapproval of the Patum's Unescoification (Jo al Fòrum no hi participo 2004).

<sup>45</sup> Alluding, of course, to the tourist-driven revitalization of Bilbao.

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