

University of Massachusetts Amherst

From the Selected Works of Neil A. Silberman

2014

From Cultural Property to Cultural Data: The Multiple Dimensions of "Ownership" in a Global Digital Age

Neil A. Silberman, *University of Massachusetts - Amherst*



Available at: https://works.bepress.com/neil_silberman/49/

From Cultural Property to Cultural Data: The Multiple Dimensions of "Ownership" in a Global Digital Age

Neil Asher Silberman

International Council on Monuments and Sites (ICOMOS)

John Henry Merryman's classic contributions to our understanding of the legal dimensions of cultural property disputes and policies have, as all the contributors to this special issue have all expressed, established the foundations for continuing reflection and debate. His "two ways" of thinking about cultural property (1986) have been enlarged by Alex Bauer's "new ways" (2007) and Sonia Katyal's "third way" (this issue). Yet Merryman's recognition of the essential duality of cultural property—"Internationalists" and "Nationalists"—still resonates strongly with much wider trends in the cultural heritage world. While Bauer and Katyal and many other scholars (e.g. Brown 2003, Appiah 2006, Cuno 2011, La Follette 2013) have emphasized the complexity of each camp's coterie and networks of enablers—for the internationalists: collectors, curators, dealers, middlemen, and illicit diggers—and for the nationalists: patriots, romantics, archaeologists, political activists, indigenous communities, and tourism promoters—the two sides have strong motivations for insisting on their attitudes about the movability, or immovability, of movable property. In fact, the two main fragmenting forces in 21st century global politics are precisely the universal and the tribal—in the sociologist Benjamin Barber's memorable charac-

terization “Jihad vs. McWorld” (2010). Of course we know that cultural property disputes in every era have often been symbolic manifestations of bitter ethnic, territorial, religious, and economic disputes that go far beyond the concerns of scholars, art lovers, and antiquarians (Lowenthal 1985). Yet in this paper I would like to place the focus on our own era’s distinctive challenge, in which digital technologies of documentation, interpretation, and communication are transforming the nature of cultural and intellectual property controversies.

In wading into the deep waters of cultural property law, I have to admit that my perspective is not that of a legal scholar but of someone who has long been involved in public heritage interpretation, and more recently through various ICOMOS and UNESCO initiatives, in the shaping of international heritage policy. The issues involved are as relevant to moveable cultural property as to World Heritage sites: Whose heritage values shall triumph? Whose voice is authoritative in the evaluation of heritage significance? What shall be the standards of authenticity? What is the relationship between the tangible and intangible dimensions of heritage objects and sites? If I were to identify a single shared element in all the discussions on the full range of topics, it would not be the conflict between internationalist and nationalist viewpoints, but rather a sharp disagreement on the attitude toward change (Araoz 2011). Where the thoroughly eurocentric 1964 Venice Charter on the standards for conservation of historic monuments (and ironically a number of indigenous repatriation agreements) have focused entirely on the importance of surviving original materials as an index of value (Hardy 2008), the visionary 1994 Nara Document insisted that standards of authenticity were entirely culture-specific and could rest on many different criteria, such as continuity of tradition, of the use of traditional materials, or in traditional production techniques, rather than in the antiquity of the fabric

itself (Stovel 2008). And where the 1972 UNESCO World Heritage Convention still insists on a precise identification of a nominated site's permanent, unchanging Outstanding Universal Value (Jokilehto et al. 2008), the 2003 UNESCO Convention on the Safeguarding of the Intangible Cultural Heritage (Marrie 2009) celebrates the dynamism of everyone's values by defining Intangible Heritage itself as being "transmitted from generation to generation... constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity..." This is cultural life in all its richness, not cultural taxidermy. Indeed, Merryman's three presciently suggested criteria for resolving cultural property disputes—Preservation, Truth, and Access—are still valid (Merryman 1989: 355-361). They have simply gained many more stakeholders, many more modes of ownership, and many more meanings in an age of decentralization, instantaneous reproduction, global dissemination through web portals and social media, and the self-conscious multiculturalism of our undeniably globalized world.

So exactly how have the digital environment and the explosion of digital information about cultural property, expanded the meanings of Merryman's trinity of cultural property ideals? Obviously there is the matter of Benjaminian "aura"—of the display (or even secret possession) of cultural property as art, as authentic, as embodying in its very materiality a kind of time-defying truth (Benjamin 2008). However, in the age of the digital, context is everything—no, not simply the archaeological stratigraphical, chronological, and precise geographical context, but a far more extensive network of contexts to users, consumers, funders, and of course to all other classes of cultural property known and documented all over the world. Whether we are talking about relational data bases, collection management systems, client management

systems, institutional and governmental websites, and social media, we must now deal with a vast “cloud” of cultural property information that extends and penetrates into economics, marketing symbolism, environmental mitigation, development planning, and last but certainly not least into local and global politics (Davis 1995). In fact, the violence and targeted cultural destruction of both occupiers and resisters that now seems to be a permanent arsenal of ethnic warfare has given rise to the use of digital technology as a tool of preservation—both real and virtual (Chen et al. 2005).

While precise digital imaging of such politically and emotionally fraught cultural properties as the Dead Sea Scrolls and the Elgin marbles have not stilled the protests about the legalities of their current physical possession, they have nevertheless created a new kind of cultural property—a kind of meta-cultural property that represents a shared global culture that we are creating today (Cameron and Kenderdine 2007). In cases where the originals are threatened with destruction by the relentless forces of racism, fundamentalism, decay, urbanization, pollution, or climate change, digital technologies in the form of real-time monitors of changes in the physical condition of cultural property and sites can assist in its preservation without the necessity of legal ownership (Ceriotti et al. 2009). Moreover, in cases where cultural property has already been destroyed—like the Buddhas of Bamiyan, the mosque at Ayodhya, or the Sufi tombs of Timbuktu—precise 3D computer models have become the richest and most detailed records, in fact stand-ins for the lost cultural property (Baltsavias et al. 2005). Indeed, the resigned conclusion of many cultural heritage professionals, drawn from the recent experiences in Iraq, Afghanistan, India, Egypt and Syria, that civil unrest and ideologically or economically motivated acts of targeted destruction of cultural property will be beyond the power of the in-

ternational community to stop has led to preemptive efforts by the UNESCO World Heritage Centre, a variety of university computer science departments in both eastern and western hemispheres, and private initiatives such as the silicon-valley based CyArk 500 to proactively laser scan heritage and cultural properties that may someday be destroyed (Addison 2001; Kacyra 2009).

I intend to deal with the changing digital dimensions of “truth” and “access” shortly, but I want to underline the most pressing preservation question that digital heritage and the digitization of cultural property has raised. That is, their own preservation, not as superfluous or supplementary data, but as cultural property in its own right (Hedstrom 1997). Its evanescence is its greatest vulnerability, because so little attention has been placed on the necessity for longevity. Changing storage media, differential processor speed, rival operating systems (which are themselves constantly evolving), varying access to broadband internet, the reliability of mega-servers (especially now with the growing dependence on cloud computing), place in danger the sheer volume and extent of our growing body of digital or digitized cultural property. No one can even reliably say—to take a very simple example—the precise lifespan of a CD (Addison 2008). We are in a seemingly mad dash to digitize cultural sites and cultural property, with every new tool available, but will that digitized culture survive? Have we personally taken the time to translate every database, image, or idea we have produced across all the PC, Apple, and Linux platforms that have arisen or taken the time to transfer data from eight-inch floppies to five and a quarter, to external terabyte size hard drives, to the cloud? The leakage of collected cultural information has been enormous, even at an individual scale. And at the scale of institutions—and here the information relationship between source and consuming countries

precisely reverses the flow of tangible cultural property—the situation is even worse. Of the hundreds of millions of dollars spent to build capacity in the monitoring and data management capabilities of museums and monument services across the world, painfully little remains of the elaborate websites, GIS and database infrastructure for digital heritage libraries when the direct funding of the World Bank, UNESCO, European Union, USAID, or bilateral agreements is ended for reasons of austerity (Zorich 2003).

And here I believe is the heart of the matter: the changing economics of cultural property in a digital age. I want to state from the outset that despite its obvious vulnerability, impermanence, and unequal access by digital heritage source nations and digital heritage consuming nations, the economic value of information about cultural property has become enormously greater than the value of the cultural property itself (Ronchi 2009). These ever swelling torrents of data, known in the private sector as “Big Data,” are highly problematic for Merryman’s second criterion of “truth,” since they vary in quality from the reliable to the trivial to the bizarre. The beauty of the graphics and the skill with which websites are designed and constructed can often make it impossible to know the trustworthiness of the presented information or even the authorship or aim (MacDonald 2006). I do not propose any form of censorship, which is any case impossible, when we are faced with the multiplicity of accepted perspectives by UNESCO and other legal instruments that protect the expression of identities, fantasies, and the other forms of public interpretation known by such gimmicky marketing names as “edutainment” or “infotainment” by which the use of collective cultural heritage data is commodified and sold (Addis 2005). And here, I believe, is where Merryman’s third criterion of “access” comes into play. Some of the datasets have very restricted circulation and strict copy-

right rules. Other collections are for a somewhat wider public—say scholars and museum staff—and are protected by password and username. Yet other material is open to anyone with an internet connection and browser. Yet it too is a form of cultural property. For there is a saying in the computer world in the age of apps, freeware, and social media, that if you pay nothing for the product, the real product is you (Turow 2012). And so it has become or will soon become in vast swathes of the cultural heritage world. If information about cultural property has become more valuable than tangible cultural property, then the information about the consumers of cultural property information is the most valuable information of all in a world where revenue from the consumption of goods and services must increasingly replace public funding for cultural institutions of all kinds.

Merryman early on recognized an economic motive underlying claims for repatriation, in the allure of expanding tourist offerings by struggling developing economies. Yet with the enormous growth of competition in cultural tourism worldwide—remember that as of 2013 there were 981 UNESCO World Heritage sites in 160 countries all vying for visitors, not to mention the 55,000 museums in 202 countries listed in the 2012 edition of the World Directory of Museums (De Gruyter Saur 2012), the skill in data mining and market segmentation is increasingly essential to the economic survival of newly created and established museums alike (Kotler, Kotler, and Kotler 2008). Thanks to the digital interconnection of cultural consumption data with personal information—credit card transactions in museum shops, subscriptions to relevant magazines, purchase of certain books—and now even—courtesy of our friends at Google, Apple, and Microsoft who are busy digitizing all manner of cultural resources—the search queries and even websites that we make—the data about cultural heritage and its use by various

classes of consumers is crucial in making decisions about what heritage sites will be developed and what museums will invest in for their next blockbuster shows (cf. Kaufman 2005). Even in the much discussed world of collectors, curators, and auctions. Sophisticated algorithms are designed to crawl through mountains of data to match certain heritage types with the highest paying donors and to make dynamic predictions of the prices at auction they will likely pay (eg. Liu, Feng, and Shao 2009). Truth in cultural heritage now ultimately inhabits the bottom line and the context is not stratigraphical but securely market-based.

What our discussions of cultural property have so far failed to dwell upon is the context of a globalized, neoliberal world (like it or not), where heritage is now often the show that provides an opportunity for commercials and where traditions are promoted for their salability. Of course since at least the era of the Grand Tour, cultural heritage and cultural property have generated subsidiary business, from guiding to accommodation, to the middleman-to-middleman sale and purchase of cultural property. Ownership was uncontested, and in this era before the spread of nation states in the so-called source regions, romantic sensibilities were almost all on the “importing” side. Preservation was not a particularly pressing issue; truth about the value and meaning of the object was relative to the reality in which one lived. But the current economic dependence on independent revenue generation is now shared by Cultural Heritage “internationalists” and “nationalists” alike. That’s why I believe that the ownership of data about cultural property is the next great frontier of our cultural heritage debates. Who owns it? Who controls it? To what uses will it be put? How will it shape our understanding of the past and our estimations of authenticity and significance?

I would like to suggest that many if not most of the current controversies over cultural property are essentially struggles for economic or social legitimacy in the present. Blogs, websites, virtual reality, interactivity are primarily the promotional come-on. In our current era, the data-driven heritage economy motivates everyone for what amounts to the same thing. Though we now sometimes depict developing nations or indigenous peoples seeking repatriation and IP protection purely for their dignity and collective identity, the legitimation to be gained from the possession of cultural property by institutions in both source and consuming nations increasingly conforms to a process of commodification with economic and social implications that go far beyond either the purchase value or cultural significance of the thing. In an effort to secure the economic future of nations, institutions, and collectivities of all kinds, the data tail now wags the cultural property dog. For better or worse, digital data now helps preserve cultural property, shape its public interpretation, suppress the cultural dissent of the digitally unconnected, and pave the cultural information highway connecting suppliers with consumers in what has now become an “experience economy” (Pine and Gilmore 2011).

That experience economy, I would suggest, feeds on pervasive feelings of aesthetic, ethnic, political, and religious nostalgia that provide comforting illusions of cultural purity and timelessness—and deny the reality of cultural hybridity and change. This kind of essentializing nostalgia may be our era’s most contagious and debilitating psycho-political disease (Boym 2007). All people change. All peoples exploit representations of heritage, claiming that their representations, collections, or interpretations are the only authentic ones. The transformation of cultural property into cultural data no less than the commodification of cultural data into property undermines the criteria of authenticity and significance that have long been held dear.

Authenticity is no longer exclusively considered to be a quality inherent in a monument or artifact (Cole 2007, Labadi 2010) but an emotion-filled relationship between people and things.

Here, an ethical dimension is needed, for emotional attachment in itself is not necessarily a positive thing. In this, both the cultural property internationalists—condemning the possessive attachment of nations to their essentialized patrimony—and the cultural property nationalists—condemning the selfish acquisitionism of private collectors and foreign museums can agree. The criteria for evaluating the claims for possession of contending parties in cultural property disputes might better be based on ethical principles rather than hard and fast rules. In that respect, I would suggest that we look again at Professor Merryman’s three criteria for informing global heritage policy—Preservation, Truth, and Access—rather than choose between the traditional identification of the two opposing sides. Both nationalists and internationalists can violate their responsibility to ensure physical conservation, free and open reflection, and public access to the range of authenticity values cultural property inevitably generates. For at this time of privatization, public austerity and the defunding of cultural institutions everywhere, the data about cultural property as well as material artifacts can be degraded, ideologically weaponized, and withheld from public scrutiny. We should therefore recognize in the 21st century world of cyberspace, virtual reality, and relational authenticity that cultural property internationalists and cultural property nationalists are not really so different. Both are wagering their futures—and the future of cultural property—on the same dangerous and unstable digital heritage marketing game.

REFERENCES

Addis, Michela

2005 New Technologies and Cultural Consumption – Edutainment Is Born! European Journal of Marketing 39(7/8): 729–736.

Addison, Alonzo C.

2001 Virtual Heritage: Technology in the Service of Culture. *In* Proceedings of the 2001 Conference on Virtual Reality, Archeology, and Cultural Heritage Pp. 343–354. VAST '01. New York, NY, USA: ACM.

2008 The Vanishing Virtual: Safeguarding Heritage's Endangered Digital Record. *In* New Heritage: New Media and Cultural Heritage. Yehuda Kalay, Janice Affleck, and Thomas Kvan, eds. Pp. 27–39. Abington, UK: Routledge.

Appiah, Kwame Anthony

2006 Whose Culture Is It? New York Review of Books 53(2): 38.

Araoz, Gustavo F.

2011 Preserving Heritage Places under a New Paradigm. Journal of Cultural Heritage Management and Sustainable Development 1(1): 55–60.

Baltsavias, Manos, Armin Gruen, Luc van Gool, and Maria Pateraki

2005 Recording, Modeling and Visualization of Cultural Heritage: Proceedings of the International Workshop, Centro Stefano Franscini, Monte Verita, Ascona, Switzerland, May 22-27, 2005. CRC Press.

Barber, Benjamin

2010 Jihad vs. McWorld: Terrorism's Challenge to Democracy. New York: Ballantine Books.

Bauer, Alexander A.

2007 New Ways of Thinking about Cultural Property: A Critical Appraisal of the Antiques Trade Debates. Fordham Int'l LJ 31: 690.

Benjamin, Walter

2008 The Work of Art in the Age of Mechanical Reproduction. Penguin UK.

Boym, Svetlana

2007 Nostalgia and Its Discontents. Hedgehog Review.

Brown, Michael F

2003 Who Owns Native Culture? Cambridge, Mass.: Harvard University Press.

Cameron, Fiona and Sarah Kenderdine

2007 Theorizing Digital Cultural Heritage: a Critical Discourse. Cambridge, Mass.: MIT Press.
<http://site.ebrary.com/id/10190483>, accessed August 23, 2013.

Ceriotti, Matteo, Luca Mottola, Gian Pietro Picco, et al.

2009 Monitoring Heritage Buildings with Wireless Sensor Networks: The Torre Aquila Deployment. *In* Proceedings of the 2009 International Conference on Information Processing in Sensor Networks Pp. 277–288. IEEE Computer Society.

Chen, Ching-chih, Howard D. Wactlar, James Z. Wang, and Kevin Kiernan

2005 Digital Imagery for Significant Cultural and Historical Materials. International Journal of Digital Libraries 5(4): 275–286.

Cole, Stroma

2007 Beyond Authenticity and Commodification. Annals of Tourism Research 34(4): 943–960.

Cuno, James

2011 Who Owns Antiquity?: Museums and the Battle over Our Ancient Heritage. Princeton, NJ: Princeton Univ. Press.

Davis, Douglas

1995 The Work of Art in the Age of Digital Reproduction (An Evolving Thesis: (1991-1995). Leonardo 28(5): 381–386.

De Gruyter Saur

2012 Museums of the World. 19th edition. München: De Gruyter Saur.

La Follette, Laetitia Amelia

2013 Negotiating Culture: Heritage, Ownership, and Intellectual Property. Amherst, MA: University of Massachusetts Press.

Hardy, Matthew

2008 The Venice Charter Revisited: Modernism, Conservation and Tradition in the 21st Century. Newcastle upon Tyne, UK: Cambridge Scholars.

Hedstrom, Margaret

1997 Digital Preservation: A Time Bomb for Digital Libraries. Computers and the Humanities 31(3): 189–202.

Jokilehto, Jukka, Christina Cameron, Michel Parent, and International Council on Monuments

and Sites

2008 The World Heritage List: What Is OUV? : Defining the Outstanding Universal Value of Cultural World Heritage Properties : An ICOMOS Study. Berlin; Paris: Hendrik Bässler Verlag ; ICOMOS, International Council on Monuments and Sites.

Kacyra, B.

2009 CyArk 500–3D Documentation of 500 Important Cultural Heritage Sites. *In* Photogram-metric Week Pp. 315–320.

Kaufman, Peter B.

2005 Marketing Culture in the Digital Age A Report on New Business Collaborations Between Libraries, Museums, Archives and Commercial Companies. Intelligent Television.
<http://protest.eanadev.org/documents/844813/852066/Marketing+Culture+in+the+Digital+Age.pdf>, accessed February 16, 2014.

Key, Jennifer

2001 Enhancing Fundraising Success with Custom Data Modelling. International Journal of Nonprofit and Voluntary Sector Marketing 6(4): 335–346.

Kotler, Neil G., Philip Kotler, and Wendy I. Kotler

2008 Museum Marketing and Strategy: Designing Missions, Building Audiences, Generating Revenue and Resources. John Wiley & Sons.

Labadi, Sophia

2010 World Heritage, Authenticity and Post-Authenticity. Pp. 66-84 in Heritage and Globalisation, Sophia Labadi and Colin Long, eds. New York: Routledge.

LIU, Yang, Yu-qiang FENG, and Zhen SHAO

2009 Support System for Predicting Online Auction End Prices. Systems Engineering - Theory & Practice 29(12): 134–140.

Lowenthal, David

1985 The Past Is a Foreign Country. Cambridge: Cambridge University Press.

MacDonald, Lindsay

2006 Digital Heritage. New York: Routledge.

Marrie, Henrietta

2009 The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage and the Protection and Maintenance of the Intangible Cultural Heritage of Indigenous Peoples. Intangible Heritage: Key Issues in Cultural Heritage: 169–192.

Merryman, John Henry

1986 Two Ways of Thinking about Cultural Property. American Journal of International Law 80(4): 831–853.

1989 The Public Interest in Cultural Property. California Law Review 77(2): 339–364.

Pine, B. Joseph, and James H Gilmore

2011 The Experience Economy. Cambridge, MA: Harvard Business Review Press

Ronchi, Alfredo M.

2009 eCulture: Cultural Content in the Digital Age. 2009 edition. New York: Springer.

Stovel, Herb

2008 Origins and Influence of the Nara Document on Authenticity. APT Bulletin 38(2/3): 9–17.

Turow, Joseph

2012 The Daily You - How the Advertising Industry Is Defining: Your Identity and Your Worth. New Haven: Yale University Press.

Zorich, Diane M.

2003 A Survey of Digital Cultural Heritage Initiatives and Their Sustainability Concerns. Council on Library and Information Resources Washington, DC.

<http://www.sinica.edu.tw/~ndaplib/service/ebook/pub118.pdf>, accessed February 16, 2014.