Big Idea final paper

It is no secret that Indigenous cultural heritage has long been commodified by Western imperialist capitalist agendas. While this phenomenon has been discussed in academia for decades, Indigenous cultures continue to be appropriated in both mainstream and niche fashion, art and music subcultures in settler colonial nations, such as Canada, the United States and Australia. The common meaning of “cultural appropriation” has acquired negative connotations, however IPinCH (the Intellectual Property Issues in Cultural Heritage Project, based at Simon Fraser University) defines the term neutrally as “when a cultural element is taken from its cultural context and used in another.” Misappropriation, on the other hand, “describes a one-sided process where one entity benefits from another group’s culture without permission and without diving something in return.” (IPinCH 2015) For the remainder of this paper, I will use these terms as just defined.

As stated in my prospectus, the intention of this paper is to appeal directly to both the consumers and producers of misappropriated cultural heritage, the majority of which is tangible, and attempt to provide a robust, morally obliging case against this practice. Covering misappropriation across all forms of art and expression would require more than ten pages so I will focus on fashion, but the conclusions are generally broad in scope. Since the various kinds of participants in this phenomenon have different interests and sensibilities, the most comprehensive counterargument should draw from legal, social, historical, ethical and political perspectives, which is what I will do. Before

delving further into these different into these, a brief overview of relevant terminology is needed.

The same IPinCH report that defines mis-/appropriation, *Think Before You Appropriate*, defines the term cultural heritage as “elements that are common to a given group because they are culturally meaningful, connected to shared memory, or linked to collective identity.” A clear distinction is then made between tangible heritage, “the material products of culture, such as objects and architecture,” and intangible heritage, being “cultural expressions, practices, and knowledge including language, dances, stories, designs, and techniques.”

In Indigenous Writes, Vowel explains that cultural heritage is inherently symbolic and cites examples from white Canadian culture to delineate the difference between restricted and unrestricted cultural symbols, and to uphold the view that the significance of restricted symbols trumps an outsider’s appreciation of the symbol’s aesthetic value (Vowel 2016). Just like with an eagle feather, there are rules and restrictions about how you can earn and who can fashion a Victoria Cross or a framed bachelor’s degree. On the other hand, like using a Canadian flag, the privilege of wearing moccasins is not restricted to those who have achieved certain things, in Vowel’s culture (i.e. Métis from the Plains Cree speaking community of Lac Ste. Anne, Alberta). Since the nuances of these restrictions are complex and circumstantial, Vowel asserts that the guiding

principle behind any kind of cultural exchange or appropriation is simply respect for the "cultural expectations of access as laid out within the culture itself."

Despite her reluctancy to declare any hard-and-fast rules, Vowel identifies three archetypal situations in which wearing an item of cultural heritage is disrespectful:

1. When the item is a restricted cultural symbol, akin to a Victoria Cross or a Giller Prize, and the wearer doesn't have permission from a relevant authority to wear it (just as most people from outside of that culture would not)
2. When the item is non-authentic (i.e. isn't designed by an Indigenous artisan), whether or not the symbol is restricted, or when the item is produced by a non-Indigenous company who didn't collaborate with any Indigenous artisans in the design process, or when the collaborating Indigenous artisans aren't remunerated sufficiently for their work
3. When the item isn't restricted, but the wearer doesn't know how to wear the item, or when the wearer has no connection to or appreciation of the culture, or the wearer has made no effort to learn about the culture the item is from or the item itself

This is not an exhaustive list but for the prospective consumer of misappropriated products of Indigenous cultural heritage, it is a good place to start.

Marx's idea of *commodity fetishism* serves as an apt introduction to the history of the subject, and even a form of justification for the discordance between Native American and European views on the "sharing" of cultural elements in the 21st century. A concept first introduced in *Capital: Critique of Politcal Economy* (Marx et al. 1955), commodity fetishism refers to the obscuring of an object's real value by its economic value in the market. In the context of this discussion, an "object" can refer to products of Indigenous cultural heritage, in this case items of clothing. Through this process, traditions with rich cultural histories that span millenia are reduced to profitable commodities which may be exploited by whoever is willing to invest in the costly legal procedures involved in securing intellectual property. If we consider this phenomenon coupled with existing imbalances of power between Indigenous communities and settler nations, it becomes clear that free market capitalism poses a real threat to the preservation of deeply valuable Indigenous cultures.

In his article, *Scenes from the Colonial Catwalk: Cultural Appropriation, Intellectual Property Rights, And Fashion*, Peter Shand attributes the main causes of this kind of misappropriation to early Enlightenment principles. He claims that "the initial phase of modern cultural heritage appropriation was underscored by the twinned ages of Enlightenment and Empire, during which all the world was made over to fit the intellectual, economic, and cultural requirements of first Europe, then the United States." (Shand 2002) Moreover, he asserts that while Anglo-American law treats tangible heritage (e.g. paintings, dress, sculptures) differently from intangible heritage (e.g.

languages, songs, customs), Indigenous peoples typically do not make this artifical distinction. If we accept this position, existing intellectual property laws appear to be inadequate when it comes to protecting cultural heritage, an idea stressed by the IPinCH report.

Indigenous conceptions of property simply do not align with that of European and settler nations, which are based on a “Cartesian proprietary scheme” and ratify a certain dominaton involved in the possession of an object by a subject (Moustaka 1989). Such a relationship is not customary in most Indigenous cultures and hence, it is unfair to impose stringent copyright laws and regulations on products of these cultures. In sum, Western notions of property, material form, authorship and originality that pervade intellectual property law do not translate into anything meaningful in Indigenous cultures, and in turn are used to colonise and erase cultural heritage through convoluted legislation.

Vanessa Udy reiterates that challenges due to fundamental differences in theory see Aboriginal peoples invariably being disadvantaged when it comes to defending their exclusive rights to profit from products of their cultural heritage. The aim of patenting or copyrighting is to protect an inventor or designer’s originality “with a bundle of economic rights.” (Udy 2015) The fact that Indigenous traditions and designs, which are not owned by a single person but shared by a group who share a common identity, are handed down through generations disqualifies them from this criterion of innovation and

the legal complications of co-ownership show that intellectual property and Aboriginal ethics and traditions are truly at odds.

Sociologist Karen Halnon describes this co-option of cultural symbols belonging to marginalised “others” by the middle and upper class as a form of gentrification, which strips these symbols of their original meanings (Halnon and Cohen 2006). And this gentrification is not just occurring in commercial, legal or even physical spheres, as Vowel expresses concern that credible online resources on Indigenous peoples in Canada have been abstracted by a profusion of stereotypes and misconceptions. For example, on Tumblr or Twitter, if one was to search for the #NativeAmerican hashtag, the majority of the top results will be non-Indigenous people dressed up to resemble the character of the Dead Indian, which Thomas King talks about in *The Inconvenient Indian*, which comprises the “stereotypes and cliches that North America has conjured up out of experiences and out of its collective imaginings and fears,” and looks something like “war bonnets, beaded shirts, fringed deerskin dresses, loincloths, headbands, feathered lances, tomahawks, moccasins, face paint, and bone chokers.” (King 2012)

This demeaning caricturisation continues to be exploited by high fashion companies, who profit greatly off this misappropriation by simply printing or embroidering a Native American chief wearing a headdrss on a sweater, for example, due to the status of their brand and typically do not collaborate respectfully with Indigenous artisans in the design

process (to name and shame a few these; Chanel, Ralph Lauren, True Religion, Supreme, Undefeated, Victoria's Secret, visvim, Off-White and Diesel).

Before a company manufactures or a consumer purchases such a product, it is imperative that they question why that product appeals to them and how they can justify their action despite the vast disapproval of these misappropriative practices. The IPinCH report outlines five tenets of a responsible creative collaboration: free prior and informed consent, shared control over process and product, acknowledgement and attribution, respect for cultural differences, and reciprocity and benefit-sharing. All settler consumers have a responsibility to recognise when a product, whether that be an item of clothing or a music record, doesn't adhere to this criteria and to acknowledge that this violation contributes directly to the pernicious history of colonial violence.

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