Cultures of Appropriation: Rock Art Ownership, Indigenous Intellectual Property, and Decolonisation

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Abstract

Both on and off the rocks, it is clear that many pictographs and petroglyphs are powerful cultural and social 'tools' as well as sacred beings. Indeed, in certain regions of many countries, cultural and socio-political identity is shaped, manipulated, and presented through rock paintings and engravings. In this chapter, we focus on re-contextualised and appropriated Indigenous heritage and rock art motifs, in commercial settings, in sports team mascots, and as integral components of political and national symbols—there are illuminating similarities (as well as differences) that span the globe. Case studies include instances where descendants of the original artists have re-imagined and adapted the meanings and uses of motifs, and also where non-Indigenous/non-descendant groups have appropriated rock art imagery—often without consultation with or permission from Traditional Owners and heritage managers. We offer results from fieldwork and study in North America, northern Australia, and southern Africa.

Keywords

Decolonisation · Intellectual property · Cultural appropriation · Commodification · Heritage · Rock art

19.1 Introduction

Images, symbols, and motifs are global phenomena, and have been for tens of thousands of years. They are 'in our heads', and they surround us—yet we so often take them for granted. Indeed, established notions of what images are and what they do are rarely challenged, which in turn discourages innovative approaches to visual heritage. At the same time, there are important debates concerning Indigenous rock art,[1] and indeed the very nature of Indigenousness (from the local to the global scale) and how Indigenous groups and their heritages are perceived and used (e.g. Dowson 1996; Janke 2003; Nicholas and Bannister 2004; Nicholas and Hollowell 2007; McNiven and Russell 2005; Lydon and Ireland 2016; Nicholas 2017a).

To Westerners,[2] many images and symbols may appear deceptively familiar today, regardless of the historical context of those images or where they originate. Thankfully, however, processes of decolonisation (including acknowledgement of the inappropriateness of casting non-Western cultures in Western moulds) are increasingly helping archaeologists, anthropologists, and members of the public to avoid the dangers of 'presentism' — that is to say, uncritically ascribing modern values to the past (Nicholas and Wylie 2009; Nicholas 2011). By interrogating the de- and re-contextualisation of Indigenous rock art in settler (colonial) nations, this chapter aims to contribute to this discourse. We limit our case studies to southern Africa, Australia, and North America, and explicate both the differences and overarching similarities between and within these regions.

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[1] For a debate on whether the term 'art' is appropriate, or an incorrect categorisation (or arrogant imposition), see e.g. Chippindale and Taçon (1998); Townsend-Gault et al. (2013).

[2] Perhaps a better term than Western is 'non-Indigenous', although both epithets are problematic (see e.g. Miller 2003; Barnard 2004a). We also acknowledge here that there is rarely a sharp boundary between Indigenous and non-Indigenous.

Because rock art sites and motifs are implicated in—and often actively drawn upon for—identity formation *today*, there is a pressing need for sensitive and appropriate presentation and for educational campaigns against misconceptions of Indigenous rock art and the people who made it. Concepts of cultural identity, Indigenous Knowledge Systems, agency, multivocality, and social exclusion are made tangible at Indigenous heritage sites; important considerations include *who* decides *how*, *why*, and *which* rock art sites are conserved, managed, and presented to the public — including the all-important subject of site access (Ndlovu 2009). As we shall see, similar questions apply to the re-contextualisation of rock art and other Indigenous imagery around the world. All of which raises the question of the arguments for and against the policing of artistic expression (Brown 2003). We have previously suggested (Hampson 2013, 2015; see also Hampson and Weaver 2021) that re-contextualised rock art motifs can be divided into five categories: commercial contexts; national symbols (Fig. 19.1); contemporary artworks 'inspired' by rock art; academic contexts; and removal to museums and art galleries.[3] But who has the right to interpret—or even speak about—Indigenous visual heritage? Can the trivialisation of reproduced or re-contextualised rock art motifs be avoided? Does sensitive and careful presentation of heritage sites and rock paintings and engravings—both on and off the rocks—make a difference, challenging visitors' and viewers' preconceptions of rock art and of the Indigenous people who made (and make) it? Perhaps the central thread of this contribution is to advocate for the combination of 'common courtesy' of community consultation (earning respect, trust and recognition), the (sad) necessity of hard legislation, and the public education that informs and encompasses these.

Indigenous art functions at both the performative/ritual as well as (what many Westerners would consider) an 'aesthetic' level (e.g. Atalay 2008; Townsend-Gault 2001; Schaafsma 2013; Townsend-Gault et al. 2013; Hampson 2016a, b; Nicholas 2017a). Indeed, the physical or virtual removal of rock art from its original context (i.e. *de*-contextualisation) by non-Indigenous individuals separates performative and aesthetic aspects, often with harmful results—there is an alarming disconnect that needs to be acknowledged (e.g. Dowson 1996; Henry 2007; Nicholas and Smith 2020).[4] Sometimes rock art is removed in circumstances of 'inevitable' land engineering, and it is deemed the best thing for the motifs even when context of place is irrevocably gone—these decisions, of course, are still largely driven by the Western mindset (Arthur et al. 2021). In short, Western predilections and desires for that which is deemed to be 'aesthetically pleasing', 'progressive', and 'beneficial'

Fig. 19.1 Indigenous rock art motifs are often found on stamps. Left: San motifs feature in this 1977 Swaziland/eSwatini set. Right: stamp and postmark celebrating the 1996 Centennial Games in Atlanta, USA, using the South African Olympic team logo, based on San motifs, on ebay.com. (See also Smith 2016: 142, Fig. 7.7)

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[3]These categories are of course not mutually exclusive; they are intended merely as helpful, albeit arbitrary, guidelines (Hampson and Weaver 2021; see also other chapters in Rozwadowski and Hampson 2021).

[4]For appraisals of the situation in *Murujuga*, Western Australia, where many rock engravings have been removed or destroyed, see McDonald 2016; Zarandona 2020.

are often dangerous and offensive to Indigenous groups (Fig. 19.2). After all, Indigenous images are not just pretty pictures; they are powerful things in themselves.

Because painted and engraved symbols are often materialisations of contested identities, and the result of specific 'modes of action' and agencies (Hodder 1986; Gell 1998; Dobres and Robb 2014; Brady et al. 2016), the presentation, manipulation, de- and re-contextualisation of images have profound consequences for many stakeholders. Indeed, perceptions of Indigenous art—especially rock art—tell us much about cultural identity and modes of being (e.g. Schaafsma 1980, 1997; Whitley 2000, 2001; Hampson 2015; Loubser 2013; Brady et al. 2016). Although tourists who visit and engage with public rock art sites and Indigenous motifs are of course part of a public that comprises manifold and ever-changing communities, there are widely shared beliefs about Indigenousness, self, and 'other' (Blundell 1996; Ouzman 2006). Some of these beliefs extend across continents; it is clearly useful to consider this topic from global, as well as regional and local, perspectives. Moreover,

the use of Indigenous peoples and their rock arts in identity formation worldwide has often objectified those people as homogenous entities frozen in a mythic time—and sometimes overlooked their very existence today (see below; also see Dowson and David Lewis-Williams 1994; Lewis-Williams 1995; Hoff 1997, 1998; Smith 2016; Skinner 2022). Perceiving Indigenous groups as nothing more than mediators (or worse, as extinct, or vanishing) opens the door to the perpetuation of egregious stereotypes.

On all scales—individual, group, regional, or larger—cultural identities, and how others perceive those identities, is a recurring theme in the humanities and social sciences (e.g. Bourdieu 1977; Handler 1988; Shennan 1989; Miller 1994; Jones 1997; Blundell 2004; Nicholas and Hollowell 2007). Researchers often fail to specify, however, exactly *how* identities are formed, revised, and perceived, and how they differ through time. These omissions often lead to the idea that identity formation is an end in itself, the ultimate goal of all cultural processes—an approach labelled essentialist or 'primordialist' (Rowlands 1994). In contrast, Malkii (1992) and
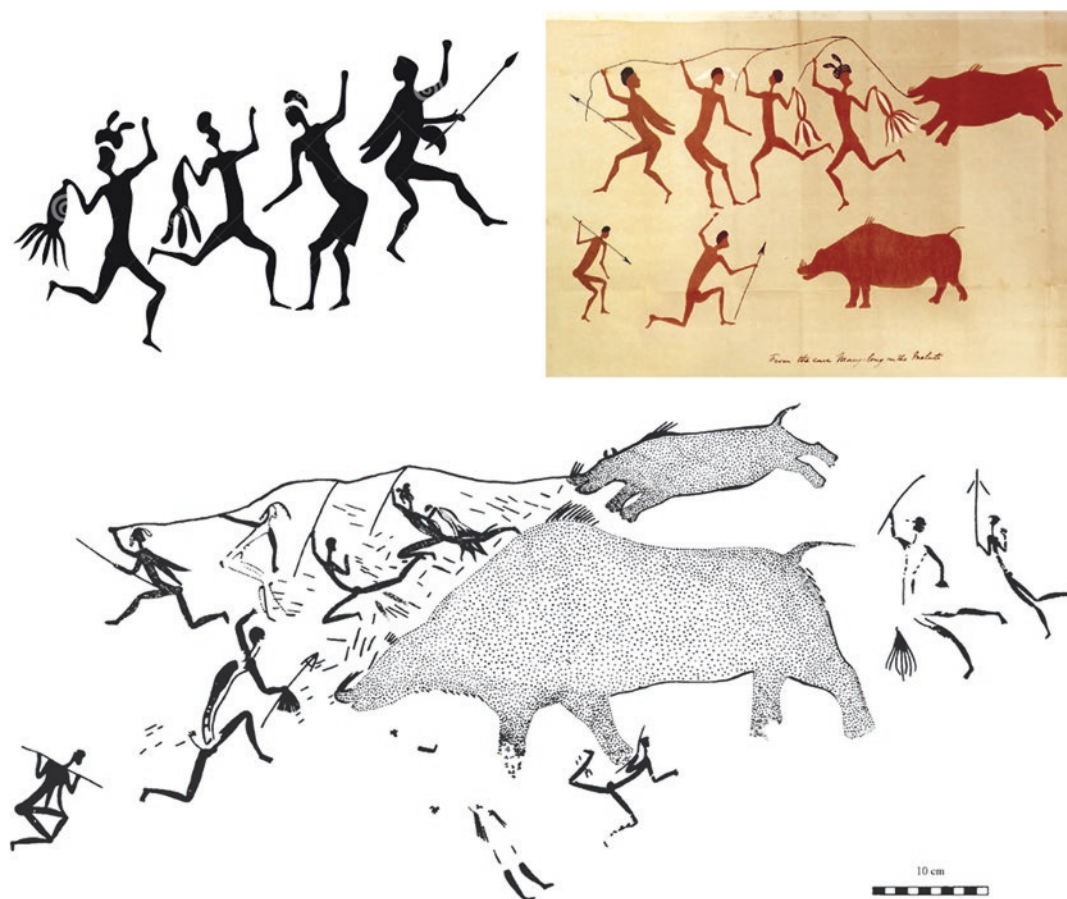

Fig. 19.2 Top left: stock image from 'dreamstime.com' titled 'Primitive figures looks like cave painting – primitive art', which simplifies and trivialises the original southern African San art, not least because the spiritually significant rain animals have been removed. Top right: the historical copy made by Joseph Orpen in 1873 from which it was abstracted (photograph by Justine Wintjes). Bottom: the archaeological tracing and re-drawing of the original rock art by Patricia Vinnicombe (Courtesy Rock Art Research Institute, University of the Witwatersrand, the KwaZulu-Natal Museum and Lucas Smits). For further discussion see Wintjes 2014

Fig. 19.3 The sacred 'sun symbol' is found on Indigenous rock art panels (left) as well as the state flag of New Mexico (right). (Photos: Jamie Hampson)

others define identity as 'always mobile … partly self-construction, partly categorisation by others, partly … a label, a weapon, a shield, a fund of memories'. Following Malkii, we employ such an 'interactionist' approach to identity, and find it particularly applicable when addressing Indigenous art and image diversity, as well as the re-contextualisation of symbols (Rowlands 1994; Blundell 1998, 2004, cf. Latour 2005; Hampson 2015). Indeed in some contexts, especially in the colonial era, identity is mutable in the extreme and, accordingly, creolisation theory is most germane (e.g. Challis 2018a).

19.2 Indigenous Cultural and Intellectual Property: Decolonising Ownership and Rethinking Value

When non-Indigenous people take rock art images and place them into new—and often commercial, money-making—contexts, they are (knowingly or otherwise) practising a form of neo-colonialism. The appropriation and re-contextualisation of the Zia sun symbol in New Mexico, for instance, is both shocking and illuminating. In 1923, when the New Mexican chapter of the Daughters of the American Revolution held a competition for a new state symbol, the winning entry was the famous sun symbol (Fig. 19.3)—a motif 'borrowed' from the Indigenous Zia group's Fire Society by physician and avocational archaeologist Harry Mera (Pino and Fugate 2012; Turner 2012; Montoya 2018; Nelson 2019).[5] Mera had seen the design on a ceremonial pot that had been removed (under suspicious circumstances) from the Zia pueblo in the late nineteenth century (Pino and Fugate 2012). Importantly, although the symbol itself has

been used in ceremonies and on rock art panels by the Zia since 1200 AD (Turner 2012; Montoya 2018; Nelson 2019), according to Zia tribal administrator Peter Pino 'Mera probably had no idea that the pot was anything special' (Pino and Fugate 2012). Nor, however, did it occur to Mera to ask Zia Pueblo if they had any reservations about his using their design. In the 1920s, Zia had a population of perhaps 120 people, and, as Pino and Fugate (2012, 3) point out,

> none of them knew where their pot was or how to get it back. In 1925 the Indians of New Mexico couldn't vote; some non-Indians considered them less than human, much less to have civil rights. Zia had few if any avenues for launching a complaint about the use of their symbol.

Pino and Fugate (2012) observe further that the sun symbol is copyrighted by the State of New Mexico and used on the state flag and on federal coins—but the Zia's use of their own symbol is not! In short, 'The Zia people would like some acknowledgement that the symbol originally belonged to Zia and that it was appropriated without their knowledge or blessing' (Pino and Fugate 2012, 4).

The sacred sun symbol motif is found, sometimes with distorted dimensions and almost always without permission, on the products of hundreds of commercial companies (selling everything from motorbikes to beer to portable toilets) in the Southwest USA (Turner 2012; Montoya 2018; Nelson 2019). After successful negotiations, plus donations to an Indigenous scholarship fund, on the other hand, some companies (e.g. Southwest airlines, Organ Mountain Outfitters) *do* have permission to use the Zia symbol. It seems that the Zia—and indeed other Indigenous groups—have had more success in protecting their sacred symbols and intellectual property (IP) rights by *negotiating*, and by employing non-legal (i.e. non-statutory) pressure, than via the trademark law courts (Turner 2012; Montoya 2018; Nelson 2019). As for profit-making companies, some of them are (at last) learning that the best way to proceed is to approach the Indigenous groups and ask permission to use sacred symbols—for an appropriate fee—rather than simply 'borrowing' them and hoping the commodification goes unnoticed and/or unchallenged (or 'ask first'; see Australian Heritage Commission

[5]Pueblo Governor Anthony Delgarito makes clear that the centre circle in the motif is 'where we are born and where we return to after this life… So when I see the symbol added to with art covering [the circle] or inside the circle, it frustrates me' (Montoya 2018). Pino and Fugate (2012) point out that 'There is pride in the recognition of an important symbol on the state flag, but there is also regret that it has been appropriated for less lofty uses'.

2002; Museums Australia 2005). As should by now be apparent, much of this debate revolves around not just value judgements, but also common courtesy, respect, and open communication (Davidson et al. 1995; Schaafsma 2013; Montoya 2018; for discussion see below cf. NAVA n.d.; Mellor and Janke 2001; SASI 2017).

Another illuminating case study focuses on the Snuneymuxw First Nation rock engravings on Gabriola Island near the city of Nanaimo (Vancouver Island, British Columbia, Canada). The motifs here—including the 'Dancing Man' and 'Kingfisher' petroglyphs—were given protection in 2000 by Canadian law under Sect. 9(1)(n)(iii) of the *Trademarks Act*, which is applicable to any 'badge, crest, emblem or mark adopted and used by public authority' (Adams 2003; Brown 2003, 84; Bell et al. 2009, 395; Nicholas 2013, 2017a; Hampson and Weaver 2021). Prior to this trademarking, reproductions of engraved motifs were used without permission on T-shirts, postcards, and items of jewellery for sale in a local museum—and the profits from sales did not go back to First Nations' groups. After the ruling in 2000, and since obtaining permission from the Snuneymuxw community, souvenirs featuring the petroglyphs are still for sale—but a share of the profits now go back to the original 'owners' of the motifs. In addition, images of the original *in situ* petroglyphs have been removed from the museum's website, and visitors are no longer allowed to make rubbings of the petroglyph reproductions (Brown 2003, 84). Shortly after the trademark ruling, too, the Dancing Man Music Festival removed the image from its logo (Bell et al. 2009, 395).

Put simply, appropriation and inappropriate commodification of the petroglyphs are no longer legally possible. Although this is not a 'one-size-fits-all' ruling, from this case study we can begin to understand how, to the Snuneymuxw, the agencies (e.g. Gosden 2005) and powers of the engravings have migrated and expanded into a modern, contemporary framework (see also Appadurai 1986; Hodder 1986). Indeed, according to First Nations groups, the powerful Snuneymuxw images (and indeed the rules governing their production and use) travelled symbolically from rock surfaces to inclusion within a new, *Western* legal system (Brown 2003, 83–87; Bell et al. 2009). Tellingly, most of the Indigenous groups who have successfully protected sacred motifs under intellectual property laws have ultimately only been able to do so through *Western* forms of legislation. In some cases, the age-old concept of 'inalienable possessions' (Weiner 1992) only seems to apply when Indigenous 'possessions' are acknowledged and re-framed within colonial legal systems (Nicholas et al. 2010; Geismar 2013; Honanie and Lomahquaha 2015). How much of this debate—and other discussions around intellectual property rights—is about financial compensation? Kathleen Johnnie, the Lands and Resources Coordinator for the Snuneymuxw First Nation Treaty Negotiation office, explained that the decision to push

for legal protection was taken primarily for *religious* rather than commercial or financial reasons (Brown 2003, 84). Snuneymuxw community elders succeeded in restricting what they consider to be the insulting, superficial, and trivialising use of their community's sacred symbols; they had no choice but to fully engage with a European-derived, non-Indigenous legislative system in order to protect rightful sovereignty (Brown 2003; Bell et al. 2009).

19.3 Commodification, Performance, Access, and Affect

Replication does not always *necessarily* equal trivialisation. For example, the late-nineteenth and early-twentieth-century invention of film and the subsequent 'democratisation' of the reproduced or replicated image was a seminal moment in the history of art in a Western context (Sontag 1977; Hanssen 2005). For the polymath Walter Benjamin, film photography was *the* transformational pivot of the modern era (Berger 1972; Hanssen 2005)—and it is clear that from the early days of the study of the anthropology of art there was an interest in the implications of an image travelling between different forms of expression (e.g. Heidegger 1950; Arendt 1968; Adorno 1970; Taussig 1993).[6] What Westerners failed to see, however, was the harm this might cause to Indigenous artists and communities (e.g. Silliman 2010; Nicholas 2011; Nicholas and Wylie 2012).

When discussing the implications of commodification and commercial advertising in a wider sense, Peter Pels (2010) usefully employs a concept similar to Bennett's (2001) notion of the 'enchanted materialism of modern life'—that is, the idea that capitalism employs 'magic' to construct and capture its markets (see also Hampson 2013, 160; Hampson and Weaver 2021). Also, and as suggested above, we know that objects with agency 'do things' to and for humans (Gosden 2005). Commodities, like people, have histories, and, as Pels (2010, 625) makes clear, 'like people, [commodities] do some things better than others; like people, their performance changes from one situation to another.'[7] The starting point in advertising is that the product has to be made to 'perform' (Pepsi cures dyspepsia, for instance); the product is then reified and 'mythically multi-

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[6]Drawing from Hegelian ideas of sublation, too, it is worth remembering that it is possible to *re*-appropriate part of a form that has been alienated (Hampson 2013, 161).

[7]Consumption *per se* is not necessarily a negative act. It is the insensitive alteration and simplistic re-configuration of images into new contexts *without permission*, not their mere adoption, which trivialises rock art heritage. Consumption is part of a complex dialectic process central to identity formation, and those who criticise consumption without caveats in fact 'confuse the vehicle with the message it carries' (Blundell 1996).

Fig. 19.4 Left: Sign in one of the visitor centres in Kakadu National Park, northern Australia. Centre: Reproductions of Kokopelli—an important being in Native American ontologies—are found in numer- ous commercial contexts, some more offensive than others. Right: cari- caturistic renditions of rock art on the 'Bushman Curios' shop in Oudtshoorn, South Africa. (Photos: Jamie Hampson and Sam Challis)

plied' (Barthes 1957; Pels 2010, 628). Arguably, this is what has happened to the multiply re-contextualised Zia sun sym- bol—and indeed to any 'brandable' image, Indigenous or otherwise.

Pels's argument is akin to Peircian ideals of indexing (Peirce 1955), a cornerstone of rock art and art history research—objects point to, or *reveal*, at the same time as they *conceal* something else. Here then is a sense of not only Marxist alienation but also an 'iconoclastic moment of deny- ing the object's inherent value' (Pels 2010, 628). In other words, sacred cultural property and fetishised commodities are not always mutually exclusive—and wherever there is an image, there is always some form of iconoclastic fetishisa- tion (Hampson 2015; see also Weiner 1992; Geismar 2013). Appadurai (1986) draws our attention to the nuances of this debate when he defines commodities as 'vital arenas' for detecting the 'politics of value'.

The Snuneymuxw/Gabriola Island example above high- lights different and often conflicting perspectives on the soci- etal role of artists. How, if at all, do the Indigenous peoples of coastal Canada and non-Indigenous societies differ in their views of art and artists? Indigenous peoples are the 'original storytellers' (Kovach 2009). For many Northwest Coast First Nation peoples, there is a long tradition of draw- ing upon performative and ritualistic tropes, as well as Indigenous prescriptive rules, in order to produce a 'sense of meaning' for audiences, both Indigenous and *non*-Indigenous (Roy 2010, 80). Coast Salish people, for example, associate specific individuals with ancestral figures, names and stories (Roth 2019, 109)—but many Coast Salish artists keep this spiritual importance private when selling artistic works to outsiders. *Within* Indigenous groups, too, it is important to remember that some individuals have greater access to spiri- tually important myths and artworks, depending on the indi- vidual's age, gender, status, and other factors (e.g. Brown 1988; Brown 2003; Schaafsma 2013; Roth 2019).[8]

As the Snuneymuxw and Nuu-chah-nulth lawyer and scholar Douglas White (2013, 643) points out, the role of Indigenous artists from the Northwest Coast of Canada has been 'nothing less than to assist in the formulation and expression of the philosophical and normative foundations underlying sovereignty and constitution of Indigenous nations'. Thus, while non-Indigenous individuals might be accustomed to the idea of artists 'breaking rules', for many Indigenous groups artists are supposed to work alongside lawmakers in order to thoughtfully and publicly express responsibilities, rights, and privileges (Roth 2019: 109).

When viewing and engaging with Indigenous symbols, then, we clearly need to go beyond Western notions of aes- thetics, and the unhelpful notion of 'art-for-art's-sake'. In a new, non-Indigenous context we might consider whether we even recognise when an Indigenous rock art motif is being used out of context, or inappropriately. Roth (2019) argues that when an 'uninitiated' non-Indigenous person is con- fronted with an image that is clearly derived from, or indica- tive of, a different cultural context, there is often (but not always) a physical and psychological reaction of dissonance (see Fig. 19.4). That should not surprise us. On an emotional

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[8]Michael Brown (1988, 198), drawing from Elizabeth Brandt (1980), who worked in the Southwest USA with Taos farming groups, argues that 'the primary motivation for closing religious knowledge to outsid- ers … is to prevent it from cycling back to *Pueblo* individuals who are not authorised to possess it. Strict compartmentalisation of knowledge is necessary to maintain the community's religious hierarchy and ulti- mately the integrity of traditional institutions, which are based on theo- cratic principles. Of equal importance is the conviction that in the wrong hands, religious knowledge loses its power or assumes destruc- tive forms.' (See also Keen 1994 and Whitley 2001.)

level, too, it is likely that, even if for a split second only, Westerners can recognise when an Indigenous image is being used insensitively.[9] Who decides, though, on what is or is not insensitive or whether or not an image is 'out of place'? Here, we would do well to remember that ethical and moral value judgements are often—some would say always—bound up in power imbalances and conflict-driven agendas. Moreover, it is only by considering Indigenous views and ontologies that non-Indigenous outsiders will come to better understand which re-contextualisations are more offensive or insensitive than others (Hollowell and Nicholas 2009; Nicholas 2017b).

19.4   Indigenous Motifs and Sport

Sport can be seen as a microcosm of contemporary life. Indeed, sport encompasses ideas of cultural belonging, market economies, and moral training; 'wrapped in the rhetoric of enjoyment and character building', it is 'play around consumptive behavior' and a 'privileged space' with millions of contributors generating millions of dollars of revenue (Giuliano 2013).[10] Rock art images used in sport at a regional or national level are undoubtedly meant to convey, in part, a pride in that region's past (as per the 1996 South African Olympic team logo above), but such images are nonetheless taken out of context and often without consent.

In the USA, there are approximately 90 universities and 1200 high schools with Native American sports mascots (Chaney et al. 2011, 43). While these mascots rarely include direct referents to rock art, they are pertinent to discussions surrounding Indigenous identity. Despite schools and individuals claiming that these mascot symbols are intended to honour Indigenous groups (e.g. Steinfeldt et al. 2010; Turner Strong 2014), studies show that mascots are often seen as a simple reflection, or equivalent, of Native Americans and

their culture; that is, many non-Indigenous individuals 'perceive that AI [American Indian] mascots and AI people are one and the same' (Chaney et al. 2011: 42). Moreover, a study by the Harvard Law Review (1999) found that regardless of intent, Indigenous mascots—and team names such as 'Braves', 'Warriors', or 'Fighting Sioux'—portray Native Americans in a stereotypic, inauthentic, and insensitive manner. Indeed, other recent studies have found that the mere presence of Native American mascots in schools engender hostile learning environments for Indigenous students (Baca 2004; Fryberg et al. 2008; see also Chaney et al. 2011; Giuliano 2013).

Native Americans, like other Indigenous groups around the world, have of course been seen by European colonists as wild and dangerous (and sometimes 'noble') savages; Chaney et al. (2011, 43) contend that 'the boundary between *American Indian as human* and *American Indian as mascot* has become blurred in American culture' (see also Deloria 1998; Farnell 2004). According to Slowikowski (1993, 28), one consequence of Native American sports mascots is that they keep Indigenous people 'allegorically fixed as a kind of "cultural souvenir" preserved in the American identity; as a result, efforts to eliminate Native American mascots are sometimes seen 'by the majority [i.e. non-Indigenous] culture as an encroachment on quintessentially American tradition' (see also Davis 1993; Chaney et al. 2011). Using Native Americans as mascot symbols amounts to social control (Giuliano 2013; see also Springwood 2004; Turner Strong 2014). Non-Indians are denying the rights of Indians to express their own identity in a space free from judgement and commercialism.

In the UK, the team previously known as Exeter Rugby Football Club underwent a rebranding in 1999 to become the 'Exeter Chiefs', and included in their logo an image of a Native American dressed in a 'war bonnet'. Unsurprisingly, there have been numerous critiques of the club (Mackay and Stirrup 2013, 9–10; Herrman 2016; Pratt 2016, 2018). Although the offensive logo has recently been replaced, there is *still* a mascot named 'Big Chief', a fan website titled 'The Tribe', and a sports chant named the 'Tomahawk Chop'. The 1999 rebrand was financially lucrative, but David Stirrup (2013, 10) points out that this success—like almost all forms of appropriation and caricature—is made possible only by the troubling 'absence of resistance', partly because of the vague and generic nature of the appropriation (i.e. of all Native Americans, not just one specific group). Is this Exeter example more or less problematic because the team plays in a nation (i.e. the UK) thousands of miles from the Indigenous groups whose symbol has been appropriated (i.e. Native Americans in the USA)? This is arguably a prime example of what Coll Thrush (2016) refers to as 'post-Imperial amnesia' and the 'disavowal of colonial histories'.

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[9]Most researchers agree that it is difficult—and perhaps impossible—to separate emotional responses from the physical (for further discussion, see e.g. Peirce 1955; Bourdieu 1993; Errington 1998; Gell 1998; Saul and Waterton 2019). In a reworking of Walter Benjamin's famous 'work of art' essay from the 1930s, Susan Buck-Morss (1992) argues that the original field of Western aesthetics had connotations with sensory reality and emotional response: every response to an image has an emotional element. Following this, Theresa Brennan (2004, 1) developed the idea that affect is an *embodied* reaction which can be registered physiologically, psychologically, and neurologically. (For more on rock art and embodiment, and the fact that images are, once again, not simply 'decorative', see e.g. Blundell 2004 and Hampson 2016b.)

[10]For excellent discussions on the use of Aboriginal *wandjina* figures/beings in the opening ceremony of the 2000 Sydney Olympics, see Graber 2009; Blundell and Woolagoodja 2012; Nicholas and Wylie 2012; Nicholas 2017b; Ouzman 2021. This is a rare example of the sensitive re-contextualisation of a sacred symbol carried out in partnership with Indigenous groups, with full and fair remuneration.

Fig. 19.5 Photograph of an Australian $10 banknote. Note the rock art motifs as well as the Morning Star Pole

19.5 Indigenous Motifs and National Symbols

There are many examples of Indigenous motifs, rock art and otherwise, appearing on bank notes, stamps, and other national symbols—including the South African coat of arms (e.g. Smith et al. 2000; Jenkins 2012; Smith 2016; Hampson and Weaver 2021), which we return to later. In Australia, Riccardo Mazzola (2020) makes clear that trials have exposed many conceptual and practical difficulties in applying Western intellectual property categories to describe and protect Indigenous artworks (see also Keen 1988, 2010; Janke 2003; Morphy 2007). In 1991, for example, Yolngu artist Terry Yumbulul commenced proceedings against the Reserve Bank of Australia because of their use of rock art and a 'likeness' of his sculpture *Morning Star Pole* on the Australian nation's bi-centennial $10 note (Fig. 19.5).

The note's non-Aboriginal 'designer', Harry Williamson, had seen Yumbulul's *Morning Star Pole* in the Australian Museum in Sydney, and, allegedly, permission to use a likeness of the work was given by someone in the Aboriginal Artist Agency (AAA) acting on Yumbulul's behalf. Elders in the Yolngu community were appalled, and strongly asserted a communal interest in the artwork; they asserted that Yumbulul was only permitted to sell the work where it would be permanently displayed to educate the wider community about Yolngu culture (Mazzola 2020). The elders stated that authority had *not* been given to allow such an important and sacred item to be reproduced on money. In his affidavit, Yumbulul declared:

> I was particularly upset because I believe that the reproduction of the *Morning Star Pole* in this way was inappropriate […] It is a caricature of my culture and religion, particularly as only I have the rights to depict the designs which are shown on the Pole in that way by virtue of my Yolngu heritage. I felt that it is my Yolngu rights which have been attacked. Furthermore, I am offended from a Yolngu point of view, as I believe that it is insulting to my mother's clan for the design to be reproduced by a person who does not have rights under our Yolngu law to do so. (Mazzola 2020, 889.)

Yumbulul also embraced Western concepts of intellectual property rights and 'originality' when stating that:

> The particular yam […] design is unique to me. I have not copied anyone else's version of this design. While other artists paint yam designs, I believe that my version of the yam design is unique to me. Each artist has his own interpretation of the yam story and the yam spirit […] I made it without any assistance from other person. (Mazzola 2020, 890.)

The dispute was eventually settled 'by agreement', and the judge in Darwin even noted the inadequacy of Australian copyright laws (see below for South Africa) to deal with community claims and customary laws dealing with ancestral designs (Mazzola 2020). Indeed, as the National Association for the Visual Arts (NAVA's) 'code of practice' makes clear, in Australia 'current copyright law does not protect rock art works that are older than 70 years from the death of the artist. Permission for reproduction of rock art or other such cultural images should be sought from appropriate local Indigenous groups or custodians.' (NAVA n.d., 112; see also Mellor and Janke 2001).

The situation in southern Africa is quite different. While in Australia there is an Indigenous Art Code (2010) as well as a national code of conduct for the marketing, sale and exhibiting of Indigenous art (NAVA n.d.; see also Pham and Janke 2009), South Africa has no such protocol specific to art and heritage (van de Weg and Barnabas 2011, 290), except for the San Code of Research Ethics (SASI 2017) which guides current studies. Both codes, however, rely on the integrity of outsiders and are thus very difficult to implement in legal terms (although see Schroeder et al. 2019). Perhaps the main reason is that the complicated modern mosaic of Khoe-San[11] survivals and struggles today belies a simple truth: that owing to processes of contact and colonisation

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[11] We follow Morris (e.g. 2006) and Hollmann (2007) in their use of 'Khoe-San', hyphenated to distinguish it from the linguistic terms 'khoisan' or 'khoesan', and to highlight that culturally Khoe and San can be, and often are, separate, though their material culture can be indistinguishable in the archaeological record. We reject any pejorative connotations associated with the word 'Bushman' in addition to 'San' (see Challis and Sinclair-Thomson (2022) for discussion).

there are no longer any rock art producers (Challis and Sinclair-Thomson 2022). Although Khoe-San rights are protected to varying degrees across the nations they inhabit (Angola, Namibia, Botswana, South Africa), the most immediate legal concerns are, of course, concerning land use rights (e.g. Chennels 2004). The IP of Indigenous Knowledge Systems came to the fore with the infamous Hoodia debate (Wynberg et al. 2009) but artistic IP seems non-existent for living Khoe-San, let alone a code of ethics for using ancient rock art. Thus the use of rock art in the public domain goes unchecked (cf. Dowson 1996).

Wendy van de Weg and Shanade Barnabas (2011, 289) observe that living San artists, whose modern work is separated temporally, geographically and stylistically from rock art (Guenther 2003, 95), though relatively safe in terms of copyright is nonetheless subject to the continued stereotyping of the San as childlike and close-to-nature. Their untrained and 'naïve' art is highly desirable to collectors yet (often knowingly) plays into 'discourses of primitivism':

> The quandary is this: the mythologising of the contemporary art increases sales (which is beneficial to artists), but it also recreates a notion of Bushman-ness as prescribed by those dominant in society (which is detrimental to communities).

So marginalised and disenfranchised are the San/Bushmen in southern Africa (including Botswana and Namibia) that not only are they 'good' to think with in the sense that they embody indigeneity, but they are 'safe' to think with in the sense that they are virtually powerless to contest the use of ancient rock art (Barnard 2004b, 19). The new South African national coat of arms (please see Fig. 19.6), commissioned in 2000 by President Thabo Mbeki, takes San rock art as its central motif; it has certainly raised the profile of Indigenous issues in South Africa and beyond (e.g. Smith et al. 2000; Barnard 2004b; Hampson 2013, 162). The irony is that the image chosen comes from a well-known rock art panel that was removed from its mountain location by Europeans in 1917 and transported over hundreds of kilometres to be displayed, for aesthetic purposes, in Cape Town (Henry 2007). It is at once African, South African and Indigenous, 'safely' out of copyright, while the motto beneath it is written in a San language no longer spoken—that of the |Xam—so as not to favour any of the 11 extant official languages. In 2022, as a move towards giving voice to San descendants, the artists' collective at the Bushman Heritage Museum at Nieu Bethesda was commissioned to create an artwork referencing themes in the national coat of arms *as they see them*. It forms part of a more nuanced reading of the original rock art and coat of arms at the Origins Centre Museum at the University of the Witwatersrand in Johannesburg.

During the negotiations with the artists' collective, it became apparent that the traditional legal approach to commissioned artwork favours buyers at the expense of tradi-

Fig. 19.6 The South African coat of arms and motto, created with the assistance of the Rock Art Research Institute at the University of the Witwatersrand, intended to centre first peoples, has drawn debate concerning their continued marginalisation (e.g. Barnard 2004b). Image courtesy Bureau of Heraldry, non-free media 'illustration in an educational article' gcis.gov.za

tional artists. It is commonplace that agreements for the sale of commissioned artworks include a transfer of an artist's copyright to the buyer, thus elevating Western private property rights over any collective benefit that may accrue to traditional communities.

With sensitivity to past injustices and the appropriation of heritage, the legal agreement with the artists' collective was prepared to ensure that the artists' collective retained the copyright in the artwork, thus protecting their right to future commercial opportunities. Whilst the South African government and many other legal activists have taken some steps to ensure that Indigenous communities receive what is due to them, it is a concern that the legal system can be used to entrench the prejudice and historical exclusion of communities like the San.

19.6 A Way Forward?

What role should academics play in these debates? As Dowson and David Lewis-Williams (1994) made clear, total withdrawal from the political arena by lecturers and researchers would mean missing an opportunity to influence how, for example, the Indigenous Khoe-San are portrayed in southern Africa (see also Buntman 1996; Jenkins 2012). Here indeed is a chance to make a difference, and to advance heritage and education 'activism'. In some parts of the world, academics have been actively involved in rock art management and

non-tokenistic community engagement for decades, but there is clearly far more to be done. This is not a naïve and fruitless call to arms, especially given the fact that incorporation of Indigenous symbols into national identities and commercial contexts will, in any event, continue with or without academic intervention.

All of the case studies outlined above are of course nuanced and complex; this is true of any topic when value judgements are being made, reinforced, and challenged. Referring to debates about different belief systems, Polly Schaafsma (2013: 2) provocatively asks 'is reconciliation [between different groups] always reasonable, desirable, or necessary?' and need we always pit an 'archaeology of colonialism' against an 'archaeology of service' (to Indigenous groups)? More would undoubtedly be solved with open communication and genuine mutual respect. Similarly, by fully recognising and incorporating Indigenous Knowledge systems—i.e. systems other than just the narrow, Western legal systems and hierarchies, which were invariably established to reproduce the dominant, colonial status quo in settler nations—we are in a better position to bring about meaningful legal reform and social justice.

Just how difficult is it to control and police artistic expression, however? According to Michael Brown (2003, 52), 'history suggests that the legal regulation of culture is at best a fruitless enterprise and at worst an invitation to new forms of manipulation by the powerful.' Indeed, advocates of 'Total Heritage Protection' talk of respect, cultural survival, and economic justice for Indigenous communities—all of which are obviously admirable goals. But, more often than not, the same advocates fail to predict how things will play out on the ground after they have imposed the institutions of surveillance, border protection, and cultural protection (Brown 2003, 52). Schaafsma (2013, 69) agrees and states that 'wholesale suppression of information … even in the interest of "protecting" Indigenous groups … ultimately fosters continued misunderstanding, misrepresentation, and boundary maintenance'. Time will tell if Brown's and Schaafsma's statements are overly pessimistic or not.

Regardless of tensions, it is apparent that *presentations* of rock art images—whether on or off the rocks, in museums or in visitor centres—also provide important opportunities for challenging misconceptions. Education is crucial for bridging cultural gaps. In full (and non-tokenistic) collaboration with Indigenous groups, cross-cultural understandings of alternative worldviews can indeed be promoted judiciously and effectively (Schaafsma 2013: 69). Thankfully, very few tourist boards continue to promote Indigenous groups as 'nature's children', removed from the political realm (Hampson 2015; see also Duval et al. 2017).[12] It seems too

that fewer and fewer heritage managers consider rock art motifs to be simple doodles or 'part of the natural backdrop'—they are increasingly aware of the deep spiritual significance of rock paintings and engravings both in the past and today (Duval et al. 2017). Similarly, more and more people are realising that rock art highlights and confirms Indigenous 'connection to country', and that local rights must not be usurped by unilateral claims about academic, national, or world heritage significance (Ouzman 2005; McDonald 2016; Nicholas 2017a). Suggested tenets and principles—such as full and meaningful collaboration, and obtaining permission prior to fieldwork—constitute a useful code of ethics, not least when those ethics are enshrined in university policy when researchers conduct anthropological interviews or collaborative archaeological fieldwork (e.g. Challis 2018b). Clearly, much of this debate revolves around notions of common courtesy as a starting point and a *sine qua non* (e.g. Meehan 1995; Schaafsma 1997, 2013; Nicholas 2017a). But action is needed too, and as we have seen, increased and sustained pressure by numerous different stakeholders brings success, and, at times, improved legislation.

There are of course many unanswered questions about the authenticity, privilege, and power of owning or presenting another culture's intellectual property, especially their sacred knowledge (Lacy and Terry. 1994, 491; Akerman 1995; Schaafsma 1997, 2013; Whitley 2001, 2013; Nicholas and Bannister 2004; Nicholas and Wylie 2009; Nicholas et al. 2010; Brady and Taçon 2016; Nicholas Nicholas 2017a, b). Intervention in the identity formation process inevitably raises concerns about research ethics, censorship, and freedom of speech—all of which contain value judgements. Schaafsma (2013: 29) warns us against 'a flaccid rhetoric of "respect," "openness," and "inclusiveness"'. Seldom are there simple answers to these political issues, and, oftentimes, the scramble for the moral high ground is itself unfettered by moral concerns. But surely we should speak up, however clumsily, rather than sit back and wait in hopeful silence. One of our central duties as anthropologists and archaeologists of rock art is to convey the richness of Indigenous ontologies and the importance of sacred symbols, whether we are Indigenous or not—especially where voices have been silenced, and meanings glossed over or wilfully ignored, for so many decades and centuries.

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[12]For a discussion on replicas of rock art sites as heritage attractions, see James (2017) and Duval et al. (2019).

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