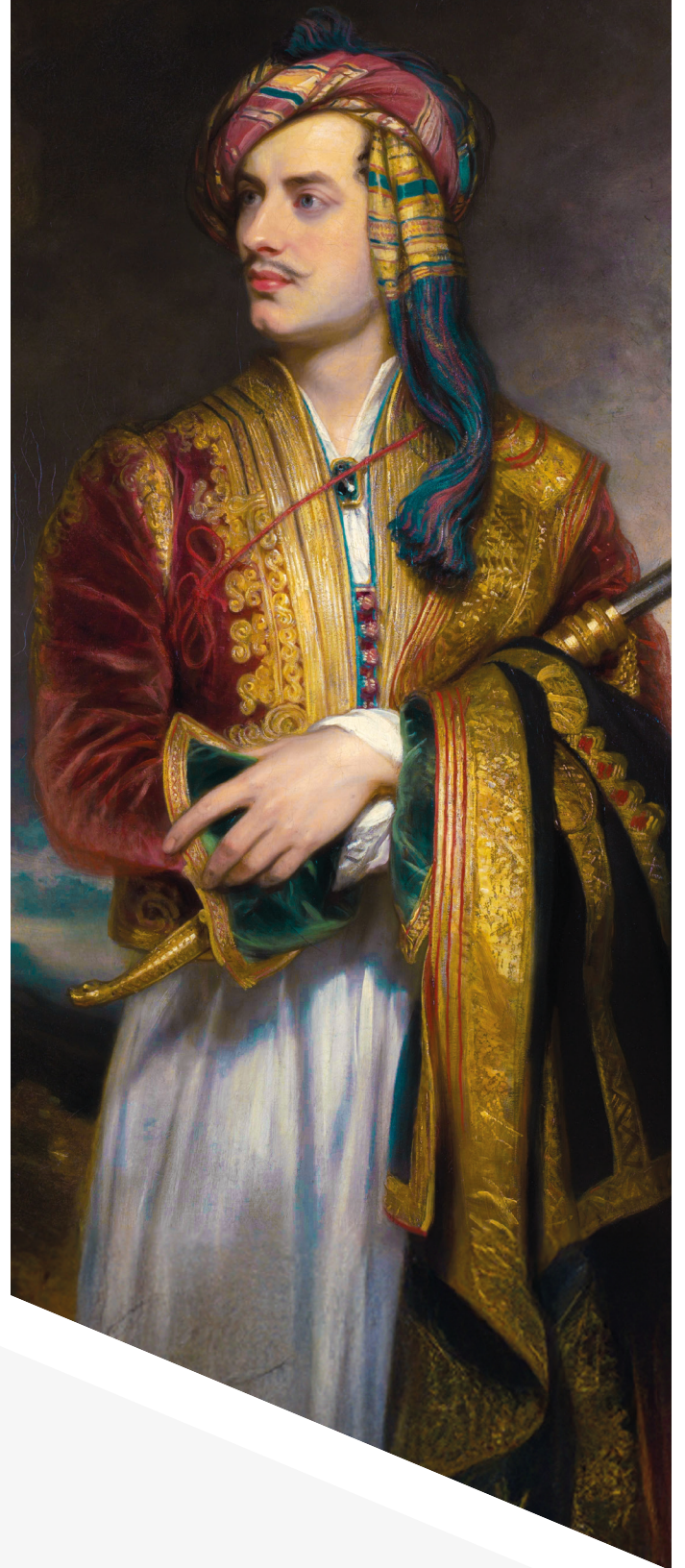


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THOMAS GUTMANN
**‘CULTURAL
APPROPRIATION’**
QUESTIONS ABOUT
A CONCEPT

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Kolleg-Forschungsgruppe
Zugang zu kulturellen Gütern
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#15

Thomas Gutmann

‘Cultural Appropriation’. Questions About a Concept

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I Introduction

1 Reconstruction of the concept

‘Cultural appropriation’ is, strictly speaking, a non-discourse. Although the expression rolls off the tongue easily for many people, there is no theoretical justification for prohibiting something that should be called cultural appropriation. Therefore, contrary to the title of my essay, it can hardly be called a ‘concept’. It is a disparate ensemble of speech acts, interventions and practices that is loosely based on something that can just as loosely be called ‘identity politics’. ‘Cultural appropriation’ is a symptom, a syndrome. In any case, it is a cluster of more or less reflected assumptions and assertions that must first be reconstructed before it can be worked with.

For the sake of an initial definition that is as neutral as possible, let us start with Yascha Mounk: The term “cultural appropriation,” he suggests, describes “a broad class of circumstances in which members of one culture use or co-opt elements of the culture of another group in supposedly objectionable ways.”¹ The definition should be broader from the outset, though, because the expression “members of one culture use or co-opt elements of the culture of another group” implies that the appropriator must belong to ‘one’ culture or be assignable to one, which, as we will see, is an open question in itself. Therefore, it would be more precise to say: The term ‘cultural appropriation’ describes a broad class of circumstances in which someone uses or co-opts elements of the culture of a group they do not belong to in supposedly objectionable ways. As such, the debates cover a very wide range of supposed offences. In all cases, the necessary premise of ‘cultural appropriation’ call-outs seems to be that “[g]roups do (or should) enjoy a form of collective ownership over their cultural products and artifacts [...]. This puts restrictions on how people who do not belong to those groups can legitimately make use of them.”²

These speech acts, interventions and practices are a form of private censorship³ that aims to restrict access to cultural goods at both the production and reception ends of the spectrum. Therefore, it is worth investigating what is being negotiated here. The underlying assump-

1 Yascha MOUNK: *The Identity Trap: A Story of Ideas and Power in Our Time*, London: Penguin Random House, 2023, 67. Cf. James O. YOUNG: *Cultural Appropriation and the Arts*, Malden: Blackwell, 2008, 5: “Members of one culture (I will call them outsiders) take for their own, or for their own use, items produced by a member or members of another culture (call them insiders).” See also Susan SCAFIDI: *Who Owns Culture? Appropriation and Authenticity in American Law*, New Brunswick / New Jersey / London: Rutgers University Press, 2005, 9, where cultural appropriation is defined as “taking—from a culture that is not one’s own—of intellectual property, cultural expressions or artifacts, history, and ways of knowledge.”

2 MOUNK: *The Identity Trap*, 130.

3 Eric Achermann. I will refer to some considerations that I learnt from Eric Achermann as part of our collaboration in the Münster Law & Literature project. Naturally, I take full responsibility for anything in what follows that you might find wrong or outrageous.

tion of this essay, of course, is that theoretical analyses of political and cultural practices are meaningful. One could cast doubt on this by arguing that the ubiquity of accusations of cultural appropriation alone proves their practical significance. However, this argument is false. There can be no meaningful political practice or effective criticism without theory. Getting the theory right is of paramount importance. “Praxis without theory, lagging behind the most advanced state of cognition, cannot but fail [...]. False praxis is no praxis.”⁴

2 Restrictions to my essay

This study has some limitations in terms of scope. The joint research project that this essay is part of⁵ focuses primarily on access to cultural goods, such as works of art and the holdings of museums, archives and collections, as well as on the forms and practices of their production, reproduction, preservation, mediation, curation and reception. Although the cultural assets dealt with in this essay are sometimes artefacts of art or literature, they are mostly of an intangible nature—“cultural expressions, history, and ways of knowledge,”⁶ practices, representations, expressions, skills and cultural spaces. Intangible cultural assets and the broad, generic idea of culture or cultures in the plural that corresponds to them seem to be somewhat on the periphery of our research interest. However, questions regarding who can access, receive, use or adopt a part of a culture, which forms of artistic or cultural expression in artefacts can be considered ‘authentic’, and who should have the right to represent whom or what in cultural forms of expression are highly relevant to the topic of access to culture and cultural goods.

This essay takes an analytical and normative approach. I will analyse the problem using the tools of practical philosophy and take a brief look at the law. For the most part, I will leave out the aesthetics of cultural appropriation and the question of whether it can be aesthetically successful. (It can.⁷) In the grand scheme of things, more differentiation would be needed than I can provide here between the appropriation of objects, content, styles, motifs and subject matters.⁸

In the second part of this text (II), I will argue that the idea of ‘cultural appropriation’ is inconsistent, misleading and harmful. It does not stand up to analytical scrutiny and is useless as a tool of criticism. In the third section (III), I will attempt to salvage what can and must

4 Theodor W. ADORNO: “Marginalia to Theory and Praxis,” in: *Critical Models. Interventions and Catchwords*, transl. Henry W. Pickford, New York: Columbia University Press, 2005, 259–278, p. 265 (in the original German: „Praxis ohne Theorie, unterhalb des fortgeschrittensten Standes von Erkenntnis, muß mißlingen [...]. Falsche Praxis ist keine.” Theodor W. ADORNO: “Marginalien zu Theorie und Praxis” [1969], in: *Gesammelte Schriften*, vol. 10.2: *Kulturkritik und Gesellschaft II*, ed. by Rolf Tiedemann, Frankfurt am Main: Suhrkamp, 2003, 759–782, p. 766).

5 This essay is written as a contribution to the Centre for Advanced Study “Access to Cultural Goods in Digital Change” at the University of Münster. It started as a lecture on 8 July 2024.

6 SCAFIDI: *Who Owns Culture?*, 9.

7 YOUNG: *Cultural Appropriation and the Arts*, 32–62.

8 Cf. *ibid.*, 5–9.

be rescued from the intellectual wreckage of reproaches concerning cultural appropriation. I will outline which behaviours and institutions targeted by the misleading accusation of cultural appropriation are actually problematic, and what their ‘wrong-making features’ might be. Ultimately, the argument will be that it is the flawed premises of the discourse on cultural appropriation that prevent an adequate analysis of the potentially harmful features of co-opting elements of other people’s cultures and hinder the development and discussion of approaches that criticise these features for good reasons and can confront them politically in a meaningful and sustainable way. Not only is the cultural appropriation discourse incoherent, it also cuts off the means for its meaningful reconstruction. It is caught in a loop that resists enlightenment.

II ‘Cultural appropriation’: A dysfunctional idea

1 Culture(s)

a) Symbolic forms

The concept of culture implicit in the discourse on cultural appropriation can be taken seriously if the term is understood as broadly and comprehensive as possible.⁹ In its broadest sense, culture is the realm in which the world is meaningfully understood and embraced. Because we are “cultural beings,” humans are gifted with the ability and the will to consciously take a stand on the world and give it meaning.¹⁰ ‘Culture’ in this sense refers to the human world as a “signifying system,”¹¹ as a product of meaning- and sense-generating symbolic forms,¹² structures, codes, and sign systems.¹³ People are inhabitants of “a symbolic universe”;¹⁴ they are (as Charles Taylor put it) “hermeneutic” or “self-interpreting animals,”¹⁵

- 9 The international legal term ‘culture’ is understood equally broadly as “an inclusive concept encompassing all manifestations of human existence.” The concept reflects the dynamism, hybridity and complexity of cultural practices and understands “culture as a living process, historical, dynamic and evolving,” which “must be seen not as a series of isolated manifestations or hermetic compartments, but as an interactive process.” See Committee on Economic, Social and Cultural Rights: General comment No. 21 (2009) on the right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), United Nations Economic and Social Council, E/C.12/GC/25, 21 December 2009, para. 11 and 12. For a more detailed discussion, see Chapter II.7.
- 10 See for the thesis that the knowledge of culture is determined by value ideas and a corresponding concept of sociology as cultural studies, Max WEBER: “Die ‘Objektivität’ sozialwissenschaftlicher und sozialpolitischer Erkenntnis” [1904], in: *Gesammelte Aufsätze zur Wissenschaftslehre*, ed. by Johannes Winckelmann, 4th ed., Tübingen: Mohr Siebeck, 1973, 146–214, p. 180; Engl. “The ‘Objectivity’ of Knowledge in Social Science and Social Policy,” in: *Collected Methodological Writings*, transl. Hans Henrik Bruun, ed. by Hans Henrik Bruun & Sam Whimster, Abingdon: Routledge, 2012, 100–138, p. 119.
- 11 Raymond WILLIAMS: *Culture*, London: Fontana, 1981, 13 (“the signifying system through which necessarily [...] a social order is communicated, reproduced, experienced, and explored”).
- 12 Ernst CASSIRER: *Philosophie der symbolischen Formen*, 3 vols. Berlin: Bruno Cassirer 1923–1929; Engl. *The Philosophy of Symbolic Forms*, transl. Steve G. Lofts, London / New York: Routledge, 2021.
- 13 For an overview: Roland POSNER: “Kultur als Zeichensystem. Zur semiotischen Explikation kulturwissenschaftlicher Grundbegriffe,” in: *Kultur als Lebenswelt und Monument*, ed. by Aleida Assmann & Dietrich Harth, Frankfurt am Main: Fischer, 1991, 37–74. For a summary of the semiotic paradigm of cultural studies and philosophy, see Christoph JAMME: “Symbolische Geltungsansprüche von Kulturen,” in: *Handbuch der Kulturwissenschaften*, vol. 1, ed. by Friedrich Jaeger et al., Stuttgart: Metzler, 2004, 207–218.
- 14 Ernst CASSIRER: *An Essay on Man. An Introduction to a Philosophy of Culture*, New Haven: Yale University Press, 1944, 25 (“No longer in a merely physical universe, man lives in a symbolic universe. Language, myth, art, and religion are parts of this universe”).
- 15 Charles TAYLOR: “Self-interpreting animals,” in: *Human Agency and Language. Philosophical Papers I*, Cambridge University Press, 1985, 45–76.

whose world is essentially constituted by their respective cultural way of life, making people themselves “cultural artifacts” (Clifford Geertz).¹⁶

In this sense, cultural knowledge is primarily implicit knowledge.¹⁷ This also applies to newer approaches in cultural and social sciences, which understand ‘culture’ less as a sign structure or community of interpretation and more as a dynamic bundle of interconnected, embodied social practices based on an implicit but shared knowledge of well-established procedures, techniques, and rules of conduct. The social practices of culture are, in the words of Theodore R. Schatzki, “a temporally unfolding and spatially dispersed nexus of doings and sayings.”¹⁸ In both perspectives, culture refers to the self-evidence and (apparent) lack of alternatives of lifeworld background certainties and established scopes of normality in communicatively constituted, value-integrated relationships. It can be argued that it is precisely this non-explicitised knowledge of language and action that constitutes the unity of cultural forms of life.¹⁹ We can already see at this point that this structural characteristic of ‘culture’ gives rise to the subsequent problem of mediating the pluralistic diversity of cultural forms of life, which (at least from their internal perspective) have emerged from distinct socio-historical processes of tradition-building. This problem is exacerbated by the fact that cultures as shared frameworks of meanings are necessarily permeated by practical validity claims.²⁰ In other words, the concept of culture is a value-concept.²¹ Cultures are centred around values and norms and consist of established practices that are oriented towards shared expectations. They “have propositional content.”²²

In the medium of cultural life, individuals and social groups give a first answer to the question of who they are, for themselves and in contrast to others. “Cultures are the way specific social groups, acting under specific historical and material conditions, have ‘made themselves’.”²³ Therefore, culture as a linguistically and symbolically mediated social self-description and self-understanding may serve to form and secure what—at least since the German Romantic understanding of culture—is often referred to *faute de mieux* as ‘collective identity’.

16 Clifford GEERTZ: “The Impact of the Concept of Culture on the Concept of Man,” in: *The Interpretation of Cultures. Selected Essays*, New York: Basic Books, 1973, 1–29, p. 25.

17 Cf. Joachim RENN: “Wissen und Explikation. Zum kognitiven Geltungsanspruch von Kulturen,” in: *Handbuch der Kulturwissenschaften*, vol. 1, ed. by Friedrich Jaeger et al., Stuttgart: Metzler, 2004, 232–248, pp. 233–234.

18 Theodore R. SCHATZKI: *Social Practices. A Wittgensteinian Approach to Human Activity and the Social*, Cambridge University Press, 1996, 89. Cf. Karl H. HÖRNING: “Kultur als Praxis,” in: *Handbuch der Kulturwissenschaften*, vol. 1, ed. by Friedrich Jaeger et al., Stuttgart: Metzler, 2004, 139–151. Cf. Sally HASLANGER: “What is a Social Practice,” *Royal Institute of Philosophy Supplement* 82 (2018), 231–247.

19 RENN: “Wissen und Explikation,” 238.

20 Cf. Matthias KETTNER: “Werte und Normen – Praktische Geltungsansprüche von Kulturen,” in: *Handbuch der Kulturwissenschaften*, vol. 1, ed. by Friedrich Jaeger et al., Stuttgart: Metzler 2004, 219–231.

21 See fn. 10.

22 Brian BARRY: *Culture and Equality*, Cambridge: Harvard University Press, 2001, 270.

23 Terence TURNER: “Anthropology and Multiculturalism: What Is Anthropology That Multiculturalism Should Be Mindful of?,” *Cultural Anthropology* 8/4 (1993), 411–429, p. 426.

In this sense, cultures have a historical dimension;²⁴ their structure is not only narrative but also grown historically and therefore not arbitrary—even if the identity-forming references are often more recent constructs and imagined communities.²⁵ Individual and collective experiences are culturally mediated in processes of transmission and hermeneutic appropriation of traditions; patterns of meaning are passed on and learnt. Thus, traditions can serve as “enduring cultural constructions of identity”;²⁶ cultural memory²⁷ is stored in them. In short, ‘culture’ is a medium in which patterns of behaviour, of expectations and of belonging are socially reproduced. Cultures can be distinct processes of socialization.²⁸ This is one of the points at which the concept of culture acquires moral and legal significance, because “from a normative point of view, the integrity of the individual legal person cannot be guaranteed without protecting the intersubjectively shared experiences and life contexts in which the person has been socialized and has formed his or her identity.”²⁹ This is also the reason why culture is valuable to people, why people can feel an intrinsic attachment to their own culture and why a certain cultural tradition or practice and also certain cultural artefacts can be of particular importance for a collective and the individuals who identify with it. What others do with these traditions or practices *can* be significant and, depending on the context, *can* be perceived as recognition, but also as unsettling, irritating, or an attack. The question is whether and when there are intersubjectively comprehensible and plausible reasons for feeling this way.

b) Culture and domination

Even at this point, however, the concept of manifold cultures shaping our lives should not be taken naively in a positive sense. Cultures are “complex human practices of signification and representation, of organization and attribution, which are internally riven by conflicting narratives,”³⁰ contradictions and antagonisms, and thus are essentially contestable. As traditions, cultures are always coagulated relations of power and subjugation. Cultures

24 Cf. Emil ANGEHRN: “Kultur und Geschichte – Historizität der Kultur und kulturelles Gedächtnis,” in: *Handbuch der Kulturwissenschaften*, vol. 1, ed. by Friedrich Jaeger et al., Stuttgart: Metzler, 2004, 385–400, p. 391.

25 See, on the dependence of forms of nationalism on the emergence of printing press capitalism, e. g. Benedict ANDERSON: *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, London / New York: Verso, 1983.

26 Aleida ASSMANN: *Zeit und Tradition*, Köln: Böhlau, 1999, 90.

27 Jan ASSMANN: “Kollektives Gedächtnis und kulturelle Identität,” in: *Kultur und Gedächtnis*, ed. by Jan Assmann & Tonio Hölscher, Frankfurt am Main: Suhrkamp, 1988, 9–19. Aleida ASSMANN: *Erinnerungsräume. Formen und Wandlungen des kulturellen Gedächtnisses*, 3rd ed., München: C. H. Beck, 2006.

28 Cf. Alan Patten’s “social lineage account of culture”: Alan PATTEN: *Equal Recognition. The Moral Foundations of Minority Rights*, Princeton University Press, 2014, 39, 50–57 (51: “A distinct culture is the relation that people share when, and to the extent that, they have shared with one another subjection to a set of formative conditions that are distinct from the formative conditions that are imposed on others.”).

29 Jürgen HABERMAS: “Struggles for Recognition in the Democratic Constitutional State,” in: *Multiculturalism. Examining the Politics of Recognition*, ed. by Amy Gutmann, Princeton University Press, 1992, 107–148, p. 129.

30 Seyla BENHABIB: *The Claims of Culture. Equality and Diversity in the Global Era*, Princeton / Oxford: Princeton University Press, 2002, ix.

require agents to make others internalise their messages about what it means to be a true member of the community. This must cast doubt from the outset on the tendency towards sacralisation that characterises the concept of culture in the discourse on cultural appropriation. Culture has always been, and still is, a medium of domination and inequality, involving imposed role models and community-specific forms of myopia and stupidity, rather than being an innocent carrier of meaning. Cultural hermeneutics must be reminded that “the context of tradition, as the locus of possible truth and factual understanding, is at the same time the locus of factual falsehood and ongoing violence.”³¹ This describes a necessary fundamental reservation about the “demand that a minority communal culture be socially esteemed for its own sake”³² without allowing further questions to be asked.

The epistemic assumptions that cultures are clearly delineable entities corresponding to population groups and that a non-controversial description of a human group’s culture can be provided are incorrect. However, they have serious political consequences for the ways we think³³, as the anthropologist Terence Turner so clearly put it: Such a view

risks essentializing the idea of culture as the property of an ethnic group or race; it risks reifying cultures as separate entities by overemphasizing their boundedness and distinctness; it risks overemphasizing the internal homogeneity of cultures in terms that potentially legitimize repressive demands for communal conformity; and by treating cultures as badges of group identity, it tends to fetishize them in ways that put them beyond the reach of critical analysis.³⁴

Thus, the question arises as to the extent to which protecting established cultures as holistic units would maintain traditional power relations within these groups, thereby disadvantaging individual members or subgroups—an aspect that Susan Moller Okin summed up in her affirmative answer to the question of whether “multiculturalism is bad for women.”³⁵ As Jürgen Habermas objected to Charles Taylor, an ‘ecological perspective on species conservation’ cannot be transferred to cultures.³⁶ Preserving cultures as if they were endangered species deprives individuals of their freedom to revise or even reject their inherited cultural identities. Against this background, constitutionalist democracies, which primarily protect the individual’s personal identity formation through subjective rights that are based on the principle of equal respect and concern, can integrate a broad range of cultural identities and ensure equal rights to coexistence for them, but they can guarantee

31 Jürgen HABERMAS: “Der Universalitätsanspruch der Hermeneutik,” in: *Theorie-Diskussion – Hermeneutik und Ideologiekritik*, Frankfurt am Main: Suhrkamp, 1971, 120–159, pp. 152–153 (transl. T. G.). Cf. Albrecht WELLMER: *Kritische Gesellschaftstheorie und Positivismus*, Frankfurt am Main: Suhrkamp, 1969, 48–49.

32 Cf. Axel HONNETH: “Redistribution as Recognition: A Response to Nancy Fraser,” in: Nancy Fraser und Axel Honneth: *Redistribution or Recognition? A Political-Philosophical Exchange*, transl. Joel Golb, James Ingram & Christiane Wilke, London / New York: Verso, 2003, 110–197, p. 167.

33 BENHABIB: *The Claims of Culture*, 4.

34 TURNER: “Anthropology and Multiculturalism,” 412. Also quoted by BENHABIB: *The Claims of Culture*, 4.

35 Susan MOLLER OKIN: “Is Multiculturalism Bad for Women?,” in: *Is Multiculturalism Bad for Women?*, ed. by Joshua Cohen, Matthew Howard & Martha Nussbaum, Princeton University Press, 1999, 7–24.

36 Jürgen HABERMAS: “Struggles for Recognition in the Democratic Constitutional State,” in: *Multiculturalism. Examining the Politics of Recognition*, ed. by Amy Gutmann, Princeton University Press, 1992, 107–148, p. 128.

survival to none. Since cultures are also power relations, the fact that modern societies are characterised by processes of detraditionalization³⁷ and “disembedding” (to use Anthony Giddens’ term³⁸), by transcending and overcoming cultural particularity on the basis of universalist principles and a rationalisation of the lifeworld (as Jürgen Habermas put it³⁹), has liberating and emancipatory effects.

The discourse on ‘cultural heritage’ should also be seen in this field of tension.⁴⁰ It is normatively more or less unproblematic, indeed well justifiable, insofar as it is framed by a universalist approach and a generalised ethics of recognition. This is the case with the purposes of the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, adopted in 2003, to protect this multifaceted heritage and to ensure respect for it.⁴¹ Intangible Cultural Heritage in this sense,⁴² officially collected on lists maintained by UNESCO, means “the practices, representations, expressions, knowledge, and skills—as well as the instruments, objects, artifacts and cultural spaces associated therewith—that communities, groups and, in some cases, individuals recognize as part of their cultural heritage” (Art. 2 para. 1 of the Convention). However, the basis of this protection in the universalist concept of human rights suggests that the term ‘cultural heritage’ refers to an ongoing, open, transcultural interpretation process with a universalist basis that necessarily transcends particular cultures, communities, and ‘identities’. As in international law no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope,⁴³ “consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments” (Art. 2

37 Paul HEELAS, Scott LASH & Paul MORRIS (eds.): *Detraditionalization*, Hoboken: Wiley-Blackwell, 1995.

38 Anthony GIDDENS: *Modernity and Self-Identity. Self and Society in the Late Modern Age*, Cambridge: Polity Press, 1991, 18.

39 Jürgen HABERMAS: *Theory of Communicative Action, Vol. Two: Lifeworld and System: A Critique of Functionalist Reason* [1981], transl. Thomas A. McCarthy, Boston, MA: Beacon Press, 1987, 86 and 113–198.

40 See Michael F. BROWN: “Heritage Trouble. Recent Work on the Protection of Intangible Cultural Property,” *International Journal of Cultural Property* 12 (2005), 40–61; Kristen A. CARPENTER, Sonia K. KATYAL & Angela R. RILEY: “In Defense of Property,” *The Yale Law Journal* 118 (2009), 1022–1125.

41 Cf. Ruben APRESSYAN: *Access to Cultural Goods in UNESCO Normative Documents* (Access Points #4), Münster 2026, DOI: [10.17879/21928647883](https://doi.org/10.17879/21928647883), p. 15–16.

42 Art. 2 para. 2 of the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage sees the “intangible cultural heritage,” as defined in Art. 2 para. 1 of the Convention, to be manifested inter alia in the following domains: (a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage; (b) performing arts; (c) social practices, rituals and festive events; (d) knowledge and practices concerning nature and the universe; (e) traditional craftsmanship. Cf. also Committee on Economic, Social and Cultural Rights: General comment No. 21 (2009) on the right of everyone to take part in cultural life, para. 13: “The Committee considers that culture, for the purpose of implementing article 15 (1) (a), encompasses, inter alia, ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives.”

43 Committee on Economic, Social and Cultural Rights: General comment No. 21 (2009) on the right of everyone to take part in cultural life, para. 18.

para. 1 of the Convention). Therefore, the cultural heritage, knowledge, skills, instruments and cultural spaces associated with female genital mutilation, which seem to be so essential for some communities e. g. in southern Egypt and Sudan, will probably not be added to the UNESCO list (although one can even try to justify quite a lot of ‘harmful traditional and cultural practices’ on the basis of an “individual human right to culture,” i.e. the right of a person to live in accordance with their cultural traditions, including the right to be harmed by these traditions, as an expression of their cultural identity⁴⁴).

National or communal endeavours to politically mark, protect and preserve certain cultural traditions maintained voluntarily by their bearers are fundamentally legitimate. Nevertheless, they must always be scrutinised for their exclusionary and discriminatory effects. For example, the debates about a dominant ‘Leitkultur’ show that this idea is deeply ingrained in the conservative mindset in Germany. They can also be instruments of oppression: In April 2024, the authorities in the Russian Republic of Chechnya—a well-known beacon of human rights and diversity—banned music that they deemed to be either too fast or too slow. This effectively criminalised many genres. From now on, musical, vocal and choreographic works will be limited to a tempo of between 80 and 116 beats per minute to “conform to the Chechen mentality and sense of rhythm,” the Chechen Minister of Culture announced, referring to the principle of forbidden cultural appropriation: “Borrowing musical culture from other peoples,” he said, “is inadmissible.”⁴⁵ In the processes of globalisation, intellectual creations of individual nations become common property, as Marx and Engels famously wrote in their Manifesto of the Communist Party,⁴⁶ and so the discourse on cultural appropriation, which emerged on the fringes of American academia, is resurfacing in faraway places where one would not have expected it, ready to be weaponized by any dictator. The message to take home here is that cries of cultural appropriation may easily be an instrument of authoritarianism if coupled with xenophobic appeals to purify a certain culture.⁴⁷

c) Hybridity of cultures

Perhaps the most important point, however, is that all human cultures are hybrids; they have all emerged through the reception of other cultures, are entangled⁴⁸ with other cultures and are the result of productive (and usually uncontrolled) adoption processes.⁴⁹

44 Cf. Romy KLIMKE: *Schädliche traditionelle und kulturelle Praktiken im internationalen und regionalen Menschenrechtsschutz*, Berlin / Heidelberg: Springer, 2019.

45 Rachel TREISMAN: “Chechnya is banning music that’s too fast or slow,” in: *NPR*, 9 April 2024, <https://npr.org/2024/04/09/1243632570/chechnya-music-ban-bpm> [5 March 2026].

46 Karl MARX & Friedrich ENGELS: *Manifesto of the Communist Party* [1848], Moscow: Progress Publishers, 1977, 39.

47 John BORROWS: “Turning Away from the State: Cultural Appropriation in the Shadow of the Courts,” in: *Voicing Identity. Cultural Appropriation and Indigenous Issues*, ed. by John Borrows & Kent McNeil, Toronto / Buffalo / London: University of Toronto Press, 2022, 155–170, p. 157.

48 Shalini RANDERIA: “Geteilte Geschichte und verwobene Moderne,” in: *Zukunftsentwürfe. Ideen für eine Kultur der Veränderung*, ed. by Jörn Rüsen, Hanna Leitgeb & Norbert Jegelka, Frankfurt am Main: Campus, 1999, 87–96.

49 See also Fn. 9.

Almost all cultural expressions, practices, and ideas are inspired by other, earlier, or neighbouring cultures. Cultures emerge as hybrids through asymmetrical processes of dominance and subversion,⁵⁰ or simply through social exchange, curiosity and fascination with the other, its explanatory power, beauty, and functionality. Cultures are anarchistic messes, collective historical tinkering experiments made from found, stolen and constantly reassembled materials, with the occasional new idea thrown in. This applies to all their elements—language, religion, food, fashion, social forms and the pool of artistic and literary forms of expression. Everything is in a flow of constant movement, “change-by-fusion, change-by-conjoining,”⁵¹ everything is creolisation⁵² and comes from cross-pollination.⁵³ Appropriation cannot stop. “So long as peoples interact with other peoples, by choice or by force, cultures will intersect and mingle and graft onto each other.”⁵⁴ As a species, cultural appropriation is our way of life. “Nearly all of the greatest dishes, customs, and inventions on which humanity can pride itself have roots in multiple cultures.”⁵⁵ And there are certainly aesthetic reasons to defend cultural hybridity. As Salman Rushdie put it, “hybridity, impurity, intermingling, the transformation that comes of new and unexpected combinations of human beings, cultures, ideas, politics, movies, songs [...]. Mélange, hotchpotch, a bit of this and a bit of that is how newness enters the world.”⁵⁶ Culture is assemblage.

The “power of cultural hybridity”⁵⁷ lies not least in the way it undermines static, reified concepts of collective cultural identities. Interpreting new or foreign cultural elements always generates shifts and ambivalences. Cultural symbols are not uniformly defined; they can be repositioned, reassigned, translated, and inserted into new contexts.⁵⁸ It is not least

50 Cf. Homi K. BHABHA: *The Location of Culture*, London: Routledge, 1994, 168–69. See, in addition, how Rome rose to imperial power not least through systematic cultural appropriation (“understood not as a set of distinct practices, but as a hydra-headed phenomenon through which Roman culture made and remade itself throughout antiquity”), Matthew P. LOAR, Carolyn MACDONALD & Dan-El PADILLA PERALTA (eds.): *Rome, Empire of Plunder*, Cambridge University Press, 2018, 5.

51 Salman RUSHDIE: *Imaginary Homelands: Essays and Criticism 1981–1991*, London: Granta, 1992, 394.

52 Robin COHEN: “Creolization and Cultural Globalization. The Soft Sounds of Fugitive Power,” *Globalizations* 4 (2007), 369–384.

53 See also Yascha MOUNK: “Should we borrow from other cultures? Of course we should, just as we always have,” *The Guardian*, September 24, 2023.

54 Lauren Michele JACKSON: *White Negroes: When Cornrows Were in Vogue ... and Other Thoughts on Cultural Appropriation*, Boston: Beacon Press, 2019, Introduction.

55 MOUNK: *The Identity Trap*, 153. For the dialectical relationship between authorship and alterity, between laws of intellectual property on the one hand and our permanent appropriation, recoding and recycling of the detritus of global commercial culture on the other hand, see Rosemary J. COOMBE: *The Cultural Life of Intellectual Properties. Authorship, Appropriation, and the Law*, Durham and London: Duke University Press, 1998.

56 RUSHDIE: *Imaginary Homelands: Essays and Criticism 1981–1991*, 394. See also YOUNG: *Cultural Appropriation and the Arts*, 32–62 and 152.

57 Pnina WERBNER: “Introduction: The Dialectics of Cultural Hybridity,” in: *Debating Cultural Hybridity. Multi-Cultural Identities and the Politics of Anti-Racism*, ed. by Pnina Werbner & Tariq Modood, London: Bloomsbury, 2015, 1–26.

58 Given that this applies particularly to religions, Elizabeth M. Bucar’s thesis, that certain forms of religious borrowing (including yoga for non-Hindus) are particularly harmful, is difficult to take seriously. Even less convincing is her

hybridity that creates the conditions for cultural reflexivity and change.⁵⁹ Therefore, as a rule, hybridity also characterises the internal composition of cultures. Cultures themselves are always temporary outcomes of often antagonistic processes of revision, negotiation, adaptation and transformation. They are never pure, but always contaminated,⁶⁰ always shaped by “processes of cultural mutation and restless (dis)continuity.”⁶¹ In addition, cultural meanings and practices are not uniform within groups. They are often controversial and contested in terms of their meaning and form.⁶² Even the expansion of the circle of recipients or participants of a work of art or cultural practice within a given culture—for example, making the work or practice accessible to people of different genders and classes—can and should be understood as a process of appropriation.⁶³ Moreover, cultures tend to overlap and intersect in various complex ways. A single person may, and usually does, belong to a variety of cultures simultaneously.⁶⁴

After considering all of the above, the thesis that all cultures are hybrids is anti-essentialist. Its critique of essentialism amounts to the argument that all the usual features that are taken to define a specific culture “run foul of the problems of internal variation and external overlap.”⁶⁵ Even if there is such a thing as ‘us’, our culture is never just our culture. For this reason, the argument against cultural appropriation, based on the idea that groups should have collective ownership of their cultural traditions, is only tenable if one ignores the historical development of cultural diversity. It is a product of reification. If all human ‘cultures’ are hybrids, to what extent can an immaterial cultural good belong exclusively to a community? Or more precisely, to one collective that, unlike other collectives, alone has the necessary prerequisites for dealing with it appropriately? To what extent can ‘culture’ be considered particular in this sense? Can anyone ever claim any rights of disposition

thesis that religious-cultural appropriation is no longer problematic if one fully adopts the reference religion, its associated institutions, communities, cosmologies, metaphysics, and systems of values. See Liz BUCAR: *Stealing my religion. Not just any cultural appropriation*, Cambridge, MA: Harvard University Press, 2022.

59 See the dialectical (and sometimes simply contradictory) poststructuralist description in Pnina WEBNER & Tariq MODOOD (eds.): *Debating Cultural Hybridity. Multi-Cultural Identities and the Politics of Anti-Racism*.

60 Kwame Anthony APPIAH: “The Case for Contamination: No to Purity. No to Tribalism. No to Cultural Protectionism. Toward a New Cosmopolitanism,” *The New York Times*, January 1, 2006 (Magazine), 31–38, 52, p. 34, quoted by Naomi MEZEY: “The Paradoxes of Cultural Property,” *Columbia Law Review* 107 (2007), pp. 2004–2046, p. 2039. Cf. Kwame Anthony APPIAH: *Cosmopolitanism. Ethics in a World of Strangers*, New York/London: W. W. Norton & Company, 2007, 101–114.

61 Paul GILROY: *The Black Atlantic: Modernity and Double Consciousness*, Cambridge, MA: Harvard University Press, 1993, 2. Cf. APPIAH: *Cosmopolitanism. Ethics in a World of Strangers*, 101–114. See also PATTEN: *Equal Recognition*, 42: “Does the culture disappear every time one or more of the meanings embodied in its practices is revised? Presumably not. But then how do we determine when a culture has disappeared and when it has been preserved?”

62 Cf. e. g. PATTEN: *Equal Recognition*, 42.

63 See e. g. Joshua S. MOSTOW: *Courtly Visions. The Ise Stories and the Politics of Cultural Appropriation*, Leiden / Boston: Brill, 2014, for the case of premodern Japanese literature. Johannes GRAVE analyses such processes under the heading of “access dynamics,” see Johannes GRAVE: *Zugangsdynamiken in den bildenden Künsten. Was macht Zugänglichkeit oder Unzugänglichkeit mit Kunst?* (Access Points #11), Münster 2026, DOI: [10.17879/69868620138](https://doi.org/10.17879/69868620138).

64 YOUNG: *Cultural Appropriation and the Arts*, 13.

65 PATTEN: *Equal Recognition*, 40.

over cultural traditions at all? How presumptuous are cultural border patrols? From this perspective, the question “Who owns culture?”⁶⁶ is a category error.

2 The trouble with collective rights

Players of the ‘cultural appropriation is bad’ card must be able to answer a series of questions if they nevertheless assume that, at least in principle, particular cultures can have certain traditions as exclusively their own: “How does a group come to enjoy ownership over a set of cultural products? Who counts as a member of that group? What is the decision-making mechanism for determining who can legitimately partake in its cultural products? And how will those who violate these rules be punished?”⁶⁷

Who gets to decide who counts as a member of a cultural group? Who is the insider, who the outsider? The discourse in the US, of course, is almost completely focused on ethnicity, although linking culture and ethnicity is more than dubious.⁶⁸ In the inverted logic of the Nuremberg Laws’ racial purity categories, we would have to ask: If you are mixed race, are you Jewish, Chinese, Native American or German enough to have a say?⁶⁹ Or how can you earn and attain membership of a culture and its collective property? But the question is broader. Who gets to count as one of the collective ‘owners’ of a practice or artifact? Can Mexican people whose ancestors mainly hail from Europe partake in cultural practices that (maybe) were invented by Mayans?⁷⁰ How big are cultures? Do Latinos and Latinas form one culture⁷¹ or many? Are all people with a German passport members of German culture? Or do they have to have a certain family tree? Is there one Swiss culture? Or are there only subcultures? Should we broaden the categories of classification, from ethnicity and ‘race’, blood and ancestry to religion, gender, sexual orientation, language and any other dimension, characteristic or experience that makes one group want to distinguish itself from the others? And how do these dimensions relate to each other? Are American-Irish gays and lesbians entitled to assert authentic Irish-American identity (if they want)?⁷² Do LGBTQIA+-people form one culture or many? Is there an Indian identity? Does it hold equally for Hindus and Muslims? And for Brahmins and Dalits? Do the upper classes and the lower classes share a common culture? Pierre Bourdieu denies this.⁷³ Can men and women ever share a common culture? Ask Andrea Dworkin, or David Byrne.⁷⁴

66 SCAFIDI: *Who Owns Culture?*.

67 MOUNK: *The Identity Trap*, 152.

68 YOUNG: *Cultural Appropriation and the Arts*, 17.

69 See the example in MOUNK: *The Identity Trap*, 147–148.

70 Ibid., 155.

71 Cf. Nestor Garcia CANCLINI: *Hybrid Cultures. Strategies for Entering and Leaving Modernity*, Minneapolis: University of Minnesota Press, 2005.

72 Cf. SCAFIDI: *Who Owns Culture?*, 67–70.

73 Pierre BOURDIEU: *La Distinction. Critique sociale du jugement*, Paris: Les Éditions de minuit, 1979; Engl. *Distinction: A Social Critique of the Judgment of Taste*, Cambridge, MA: Harvard University Press, 1984.

74 “No one knows how it started / And God knows how it’ll end / The fightin’ continues / Women versus Men” – Byrne: *Women vs. Men* (1989).

Due to the fluidity and entanglement of ‘cultures’, it seems generally impossible to define the necessary and sufficient conditions for acquiring rights-generating membership of a particular culture, even if we treat the concept of culture as a Wittgensteinian concept of family resemblance.⁷⁵ However, cultural property can hardly be justified without a sufficiently clearly defined collective. It presupposes a strong sense of collective identity that can establish the belonging of objects across time and space through a *proprium*. This concept of identity must be capable of morally or legally establishing its own sphere of protection by virtue of belonging, as well as offering a plausible answer to the question of what constitutes and presupposes cultural group continuity over time.⁷⁶ That is hardly achievable without strong forms of essentialist attributions.⁷⁷ After all, the aim is to convey a ‘cultural inheritance right’ to certain descendants as authentic continuators of a particular culture, thereby giving them collective rights of disposition over certain traditions, practices, and even over associated experiences and ideas (keyword: ‘misrepresentation’, see below). However, cultures are mutable. At least under conditions of modernity, “an unbroken chain of intergenerational cultural transmission”⁷⁸ is a rather rare phenomenon. Ancient and modern Greeks do not share a common culture, and almost every culture has changed dramatically through modernisation and globalisation. Questioning the possibility of a descriptively and normatively adequate concept of culture that could serve as the basis for the attribution of exclusive rights of disposition, authors such as Amartya Sen,⁷⁹ Jeremy Waldron,⁸⁰ and Seyla Benhabib⁸¹ have criticised the thesis of delineable, homogeneous identities as an illusion. They refer to the cultural hybridity and complexity of modern societies and criticise the tendency to quickly reify given group identities, which risks freezing existing group differences.⁸² It seems evident that the idea that human groups and cultures are distinct entities that coexist while maintaining clear boundaries is both empirically and normatively incorrect.⁸³ Furthermore, cultural affiliations are not one-dimensional. Cultural identity is multi-faceted and also at the ontogenetic level of individual personality, subject to constant revision and change.⁸⁴ There is no reason to assume that any one aspect of a person’s identity predominates over all

75 Cf. YOUNG: *Cultural Appropriation and the Arts*, 14–15.

76 Kwame Anthony APPIAH: “Whose Culture Is It, Anyway?,” in: *Cosmopolitanism. Ethics in a World of Strangers*, 115–136.

77 Cf. PATTEN: *Equal Recognition*, 38–68. The author tries to demonstrate that it is possible to elaborate a plausible nonessentialist concept of culture that is compatible with internal heterogeneity and external overlap and still serviceable to the normative agenda of an enlightened multiculturalism.

78 PATTEN: *Equal Recognition*, 50.

79 Amartya SEN: *Identity and Violence: The Illusion of Destiny*, New York / London: W. W. Norton & Company, 2007.

80 Jeremy WALDRON: “Minority Cultures and the Cosmopolitan Alternative,” in: *Multicultural Citizenship. A Liberal Theory of Minority Rights*, ed. by Will Kymlicka, Oxford / New York: Clarendon Press, 1995, 93–119; Jeremy WALDRON: “What is Cosmopolitan?,” *The Journal of Political Philosophy* 8 (2000), 227–243.

81 BENHABIB: *The Claims of Culture*.

82 Ibid., ix.

83 Ibid., 7–8.

84 John CHRISTMAN: *The Politics of Persons: Individual Autonomy and Socio-historical Selves*, Cambridge University Press, 2009; Michael QUANTE: *Human Persons*, Paderborn: Mentis, 2020.

the others and even less reason to assume that such a hierarchy could remain constant (that it could provide stable, unchanging identity structures). The idea that humanity, with its diverse affiliations and vastly different social contexts that convey identity, can be reduced to a single, supposedly dominant classification scheme is overly simplistic and obviously false.

In law, as well as in theories of moral rights, claims relating to cultural property and inheritance raise theoretically intricate and largely unsolved problems concerning collective or group rights.⁸⁵ The main questions here are what degree of unity, identity, organization, capacity to act,⁸⁶ shared interests⁸⁷ or even “inherent value”⁸⁸ makes an informal group a possible legal (or moral) entity, who can represent such a group in the exercise of collective rights (the power question) and, again, to what extent the institutional strengthening of (minority) cultures and their respective group autonomy would maintain traditional power relations within these groups, thereby taking place at the expense of individual members⁸⁹ or subgroups.⁹⁰ In the last analysis, cultural group rights seem generally questionable from a normative point of view, if the protection of forms of life and traditions in which identities are formed is supposed to serve the recognition of their members as individual bearers of rights.⁹¹

3 Appropriation: Reification of culture as ‘property’

Questions of cultural property and cultural heritage and the associated claim that the respective cultural ‘owners’ and ‘heirs’ have their cultural tradition at their disposal, including the right to make legally and/or morally binding decisions regarding its components and access to them, seem to be based on a paradox:⁹² ‘Culture’ as an always fluid, hybrid

85 See for a distinctively liberal approach to minority rights Will KYMLICKA (ed.): *The Rights of Minority Cultures*, Oxford / New York: Clarendon Press, 1995. Rejecting this view, Chandran KUKATHAS: “Are There Any Cultural Rights?,” *Political Theory* 20 (1995), 105–139, and Chandran KUKATHAS: *The Liberal Archipelago. A Theory of Diversity and Freedom*, Oxford University Press, 2003. Critical for socio-ontological reasons Jan NARVESON: “Collective Rights?,” *Canadian Journal of Law and Jurisprudence* 4 (1991), 329–345, and Carl WELLMAN: *Real Rights*, Oxford University Press, 1995, 157–177. Mediating Steven WALL: “Collective Rights and Individual Autonomy,” *Ethics* 117 (2007), 234–264.

86 Adina PREDA: “Group Rights and Group Agency,” *Journal of Moral Philosophy* 9 (2012), 229–254. Marlies GALENKAMP: *Individualism and Collectivism. The Concept of Collective Rights*, Rotterdam: Erasmus Universiteit, 1993. See also Christian LIST & Philip PETTIT: *Group Agency: The Possibility, Design and Status of Corporate Agents*, Oxford University Press, 2011.

87 Paul SHEEHY: *The Reality of Social Groups*, Aldershot: Routledge, 2006. Larry MAY: *The Morality of Groups. Collective Responsibility, Group-Based Harm, and Corporate Rights*, University of Notre Dame Press, 1987.

88 Miodrag A. JOVANOVIĆ: *Collective Rights. A Legal Theory*, Cambridge University Press, 2012, 6.

89 Claus OFFE: “Homogeneity and Constitutional Democracy. Coping with Identity Conflicts through Group Rights,” *Journal of Political Philosophy* 6 (1998), 113–141, 131–134.

90 On the problem of internal minorities, see Abigail EISENBERG & Jeff SPINNER-HALEV (eds.): *Minorities within Minorities. Equality, Rights, and Diversity*, Cambridge University Press, 2005, and Daniel M. WEINSTOCK: “Liberalism, Multiculturalism, and the Problem of Internal Minorities,” in: *Multiculturalism and Political Theory*, ed. by Anthony Simon Laden & David Owen, Cambridge University Press, 2007, 245–264.

91 HABERMAS: “Struggles for Recognition in the Democratic Constitutional State,” 130.

92 Naomi MEZEY: “The Paradoxes of Cultural Property,” *Columbia Law Review* 107 (2007), p. 2004–2046.

and dynamic practice based on implicit knowledge, is pressed into the static and reifying concepts of (intellectual) property or the right of ownership. Physically tangible art objects and objects of worship that were stolen or extorted, including those acquired within the colonial system as “a system of appropriation and alienation,”⁹³ can be returned and reappropriated. In most cases legal successors can be found in terms of ownership.⁹⁴ “Cultural appropriation as theft” (or deceit or coercion), to use James O. Young’s term,⁹⁵ can (or could) often, though not easily, be rectified using the concept of property. However, with intangible cultural heritage, the concept of property seems to be a category error, because “a cultural network [...] cannot be appropriated as private property any more than the mother tongue itself can be.”⁹⁶ In this sense, the term ‘cultural heritage’ is problematic too, as it seems to replicate the problematic logic of cultural property, suggesting that cultures belong to groups in an important way.⁹⁷

But even if we ignore all that, “the popular logic of cultural property”⁹⁸ will hardly work. If we take seriously the idea that every culture consists of hybrid appropriation processes, we will quickly realise that all the alleged victims of cultural appropriation are guilty of the same thing. Even if you believe, as the liberal mainstream has since Locke, that an act of creation also establishes rights of ownership, “it is far from clear that the creative act of an individual—or even of a small group—should transmit such rights to the kinds of large identity-based categories the critics of cultural appropriation seek to assign an informal property right.”⁹⁹ The suggestion that people in the past would have intended that a culture as a whole or any large societal group inherit their intellectual property is pretty obviously a non-starter.¹⁰⁰ Neither does a culture have a plausible claim on the original products of its members nor does an artist’s use of the traditional knowledge of his culture—of artistic commons—make his work a collective product and, consequently, collective property.¹⁰¹ The “strange alchemy”¹⁰² of the property discourse in the cultural appropriation talk does not work. Moreover, members of hybrid and evolving cultures (and which living culture is not evolving?) will debate the authenticity of particular cultural products, which may then be recognised as the community’s cultural property. Alternatively, they may disagree about

93 Felwine SARR & Bénédicte SAVOY: *The Restitution of African Cultural Heritage. Toward a New Relational Ethics*, Paris, 21 November 2018, 2.

94 SARR & SAVOY: *The Restitution of African Cultural Heritage*. See e. g. the case studies in Bénédicte SAVOY: *Who Owns Beauty?*, transl. Andrew Brown, Cambridge: Polity Press, 2025.

95 YOUNG: *Cultural Appropriation and the Arts*, 63–105.

96 HABERMAS: “Struggles for Recognition in the Democratic Constitutional State,” 129.

97 MEZEY: “The Paradoxes of Cultural Property,” p. 2013.

98 Ibid., p. 2019.

99 MOUNK: *The Identity Trap*, 155.

100 YOUNG: *Cultural Appropriation and the Arts*, 68–69. “You can’t steal a gift. Bird [Charlie Parker] gave the world his music, and if you can hear it you can have it,” as Dizzy Gillespie responded to Phil Woods who questioned the legitimacy of his success as a white musician (Gene LEES: *You Can’t Steal a Gift: Dizzy, Clark, Milt, and Nat*, New Haven: Yale University Press, 2001, 96, quoted by SCAFIDI: *Who Owns Culture?*, 93).

101 YOUNG: *Cultural Appropriation and the Arts*, 8.

102 MOUNK: *The Identity Trap*, 255.

whether the public should be granted access at all.¹⁰³ Once again, the structural problems and paradoxes surrounding the idea that groups should enjoy collective ownership of their cultural traditions appear insoluble. If there is no owner, no one can give permission. If cultural appropriation is defined as taking intellectual property, traditional knowledge, cultural expressions or artefacts from another culture without permission,¹⁰⁴ there will be no exchange, and everyone must remain in their cages.

As Naomi Mezey has demonstrated, the reification of culture as ‘property’, which is the necessary premise of the cultural appropriation discourse, has further detrimental effects.¹⁰⁵ This concept is inherently based on a static view of cultural production and practices, which is sanitised, domesticated and impoverished.¹⁰⁶ Such a view is not only oppressive and constraining for ‘outsiders’, but also for the members of the group itself. It hinders cultural identities’ ability to adapt and evolve, and fixed cultural boundaries in the form of trademarks often legitimise a dominant—and frequently controversial—account of group culture, despite objections from those who reject or challenge it.¹⁰⁷ Furthermore, the reification of culture as ‘property’ not only directs cultural practices towards their capitalist exploitability, it also allows them to become the focus of litigation, legislation, and other forms of bureaucratic control.¹⁰⁸ A much more appropriate counternarrative to the discourse on cultural appropriation is the narrative of cultural fusion and hybridity, the view that culture is dynamic in its appropriations, reappropriations, mixings, hybridisations and contaminations¹⁰⁹ (see above, II.1.c). However, this counternarrative is incompatible with the flawed idea of collective property rights of groups in their cultural heritage. This is a sufficient reason not to pursue the project of extending forms of intellectual property protection to intangible cultural products and community-generated art forms.¹¹⁰

103 Cf. SCAFIDI: *Who Owns Culture?*, 10, 56, 63, and 67–89.

104 Cf. SCAFIDI: *Who Owns Culture?* Cf. Lionel SHRIVER: “I hope the concept of cultural appropriation is a passing fad,” *The Guardian*, 13 September 2016, <https://www.theguardian.com/commentisfree/2016/sep/13/lionel-shrivers-full-speech-i-hope-the-concept-of-cultural-appropriation-is-a-passing-fad> [5 March 2026].

105 MEZEY: “The Paradoxes of Cultural Property,” pp. 2004–2046.

106 See on the criticism that by declaring more and more components and aspects of culture as heritage, a conservative concept of culture oriented towards representing the past is emerging, threatening to reduce heritage to preservation, conservation and continuity, among others, Stefan WILLER: *Erbfälle. Theorie und Praxis kultureller Übertragung in der Moderne*, Paderborn: Wilhelm Fink, 2014, 14 and 329–339 (334: “the problem of monumentalising and immobilising heritage”).

107 See also PATTEN: *Equal Recognition*, 42.

108 Michael F. BROWN: *Who Owns Native American Culture?*, Cambridge, MA: Harvard University Press, 2003, 7; cf. MEZEY: “The Paradoxes of Cultural Property,” pp. 2004, 2020.

109 MEZEY: “The Paradoxes of Cultural Property,” pp. 2004, 2006 and 2026.

110 This is done by Susan Scafidi, seeking a legal paradigm that strikes an equitable balance between source-community rights and the public interest in cultural products, cf. SCAFIDI: *Who Owns Culture?*

4 Cutting two ways or asymmetry?

If the cultural appropriation discourse is understood in a culturally relativistic but neutral way, i.e. purely from a cultural-theoretical perspective, it would have to prohibit all members of one culture from appropriating the ‘cultural property’ of another. The universalisability and uniform applicability of the concept is a theoretical necessity. With the possible exception of some indigenous peoples, the structural conditions of modern societies ensure that cultural influences flow in all directions. Today, no single culture, be it African-American,¹¹¹ African-German, Indian, South American or otherwise, exists without strong borrowings from ‘white’ or European traditions, techniques and forms of expression. Without Adolphe Sax, no John Coltrane, without Arnold Schönberg, no Anthony Braxton,¹¹² and even Julius Eastman’s unique voice was merely a powerful variation in the minimal music movement, which did not differentiate based on skin colour and borrowed ideas about form and function from white composers throughout history, from the 16th to the 20th century. So, if there’s a serious problem with white people playing jazz, then an African-American woman isn’t entitled to play Bach’s Cello Suites. *Tant pis*. Or is she? If so, why?

In the discussion in the US, which focuses almost entirely on ethnicity, the answer is that it is acceptable for a ‘Black’ person to appropriate elements from a ‘white’ culture, but not the other way around. Historically, whites have oppressed and enslaved Blacks, and racism against Black people is still widespread and deeply entrenched. According to this argument, there are primarily group responsibilities and group rights, so no white person is permitted to culturally appropriate from Black people, but all Black people are entitled to appropriate from white people, this being either a strange kind of reparation, or a collective sanction for the historical misconduct of a group called ‘white people’. While there are strong arguments in favour of political communities pursuing strategies of reparations and affirmative action to remedy past injustices that continue to have structural effects,¹¹³ it is difficult, indeed impossible, to see how these strategies could plausibly extend to the question of who is allowed to appreciate whose culture. Even on a purely descriptive level, there is no ‘group’ of ‘white people’ to whom collective responsibility for the historical wrongs committed by certain actors could be attributed today, even if the crimes in question were committed by groups that took pride in their ‘whiteness’ or their ethnic ‘descent’ and granted advantages and privileges to other people with these ‘characteristics’ or this ‘identity’. Moreover, there is no ‘white culture’ that would unite ‘white people’ into a single entity. In any case, such crude attributions of responsibility to entire groups can never be justified. Essentialisations

111 See, among many others, GILROY: *The Black Atlantic*, about a distinct Black culture that incorporated elements from African and Caribbean, but also from American, British, and other European cultures.

112 Walter Benn MICHAELS: “The Myth of ‘Cultural Appropriation’. Even our own stories don’t belong to us,” *The Chronicle of Higher Education*, 2 July 2017, <https://www.chronicle.com/article/the-myth-of-cultural-appropriation/> [5 March 2026].

113 HABERMAS: “Struggles for Recognition in the Democratic Constitutional State,” 129.



Fig. 1: Singer Katy Perry performs “Unconditionally” with dancers during the 2013 American Music Awards. Photo: Kevin Winter/Today, https://media-cldnry.s-nbcnews.com/image/upload/t_fit-1000w,f_avif,q_auto:eco,dpr_2/streams/2013/November/131125/2D9769810-today-katy-perry-geisha-131125-1.jpg

of this kind are not even helpful descriptively, and are never tenable normatively. The argument for asymmetrically applying the prohibition of cultural appropriation is racist in itself.

In any case, if we were to apply the prohibition of cultural appropriation asymmetrically, we would have to distinguish between ‘good’ (non-dominant) and ‘bad’ cultures, if the premise is that only members of a ‘good’ culture can be permitted to adopt the culture of others. But who counts as ‘good’? The usual criterion given for this is ascribed (or self-attributed) collective victim status. This refers not only to present injustices against a collective, but also attributes to current members of (allegedly) the same collective the right to convert past injustices against its members into cultural exclusivity rights.

Pop star Katy Perry was criticised for a performance wearing a kimono and a geisha-style make-up.¹¹⁴ So what about Japan? What must be going through the minds of those who are conducting the cultural appropriation discourse here? At least, people from East Asia are not usually regarded as ‘white’, so they might count among the good ones. On the other hand, from the 1930s until 1945, Japan was the second fascist superpower alongside the Nazis, with imperialist fantasies of world domination. Before and during the Second World War, the Empire of Japan committed numerous war crimes and crimes against humanity, killing 250,000 people in human experimentation in occupied China alone. However, the

114 Cf. Nolan FEENEY: “Katy Perry’s ‘Geisha-Style’ Performance Needs to Be Called Out,” *The Atlantic*, 25 November 2013, <https://www.theatlantic.com/entertainment/archive/2013/11/katy-perrys-geisha-style-performance-needs-to-be-called-out/281805/> [5 March 2026].

Japanese people suffered the bombings of Hiroshima and Nagasaki, so perhaps that is why they are considered 'good' again now and can suffer cultural appropriation at the hands of Americans ... What about cultural appropriation between members of 'minority cultures?' For his extremely successful album *Head Hunters* (1973), Herbie Hancock appropriated a style developed by the pygmies of the Ituri Forest in central Africa from a UNESCO-supported ethnomusicological recording, without acknowledging his borrowings. He defended his use of Ba-Benzélé music on the grounds that "it's a brother kind of thing" and "we're all making African music."¹¹⁵ Are we now?¹¹⁶ Are African Americans not part of the Global North, while they use the culture of the Global South? What about the long tradition of Mardi Gras Indians (or Black Masking Indians), African American carnival revelers in New Orleans, who dress up for Mardi Gras in suits influenced by Native American ceremonial apparel?¹¹⁷ Is there anything wrong with that? Although there historically have been Black-Indigenous alliances, why exactly are Mardi Gras Indians (rightfully) considered to be an African-American art form and not a case of cultural appropriation? Is it because both groups have been equally victimised by white America? So if you are "not a part of the dominating culture," you can appropriate freely?¹¹⁸

And why then, on the other hand, was Pharrell Williams criticised for wearing a Native American headdress on the cover of *Elle*? Because "we are what we wear"?, because of the close "link between clothing and personal identity"?¹¹⁹ Really? So what, if anything, is really wrong with Pharrell William's headdress? That he is rich? But so are a lot of members of the First Nations, due to the Casino business on tribal lands. Or is it the fact that for Native Americans—or the respective tribe—certain headdresses can have a deep cultural significance, whereas selling fashion and the cover of *Elle* are comparatively unimportant, even ridiculous matters? Maybe. I will come back to this.

If you want to justify the asymmetrical use of the accusation of cultural appropriation, you must create a 'food chain of appropriations', a scale of collective victim statuses and group privileges. There cannot be a solution to that. This is certainly not possible in a society

115 YOUNG: *Cultural Appropriation and the Arts*, 28.

116 If one takes the (flawed) premises of the cultural appropriation argument and its fantasies of purity seriously, one cannot escape the conclusion that appropriating artistic content considered to be traditional music through the use of historical recordings causes harm by default, see Elizabeth Burns COLEMAN, Rosemary J. COOMBE & Fiona MACARAILT: "A Broken Record: Subjecting 'Music' to Cultural Rights," in: *The Ethics of Cultural Appropriation*, ed. by James O. Young & Conrad G. Brunk, Malden/Oxford: John Wiley & Sons, 2009, 173–210.

117 See e. g. the musician Chief Xian aTunde Adjuah (formerly Christian Scott), Chieftain of the Xodokan Nation of Maroons and Grand Griot of New Orleans.

118 Cf. Jonita Davis, on Bruno Mars, who has come under fire because of his hit songs that often borrow Black hip-hop, jazz, and blues sounds: "Mars comes from two cultures that have been heavily assaulted by dominant white American culture. Yes, he is using Black music traditions and combining them with his own to make new sounds. However, because he is not a part of the dominating culture, technically he is not appropriating." Being not 'White,' he cannot "replace the original with a whitewashed copy" (Jonita DAVIS: *Questioning Cultural Appropriation*, New York: Enslow Publishing, 2019, Chapter 1).

119 Susan SCAFIDI: "When Native American Appropriation Is Appropriate," *Time*, 6 June 2014.



Fig. 2: *Elle UK*, cover of the July 2014 edition, depicting Pharell Williams wearing a faux Native American head-dress. Photo: Doug Inglish, *Elle*

where we have learned that we can criticise structures and institutions, but can only attribute responsibility to individuals. Ultimately, even the generic statement that the prohibition of cultural appropriation should only refer to members of “a comparatively ‘privileged’ group” is problematic, as being such a member says almost nothing about the individual’s social status, rights, legitimate interests, or personal and inherited responsibilities. What does a white kid from a dysfunctional, poor family in Missouri, who wants to write and perform rap songs about the popular angst of lower-income America, have in common with the ‘white dominant culture’? (In addition, given the multi-billion-dollar Black rap and hip-hop industry, it would be a legitimate question to ask who represents the ‘dominant culture’ here). The asymmetrical cultural appropriation discourse subsumes all people under a single dominant group affiliation, attributing the characteristics and historical behaviour of former agents regarded as representatives of a particular group to all people currently regarded as members of allegedly the same group in a primitive essentialist manner that has to neglect necessary distinctions.

5 Problems of ‘authentic representation’

Activists demand and Amazon Studios (at least in pre-Trump times) announced only “to cast actors in a role whose identity aligns with the identity of the character they will be playing (by gender, gender identity, nationality, race/ethnicity, sexual orientation, and disability).”¹²⁰ Insofar as this is a diversity policy that strives for equal opportunities, it can hardly be criticised. However, lurking in the background of this discourse is also an assertion about aesthetic (or ‘existential’) authenticity, which is a variation of the cultural appreciation discourse. Only gay actors can play gay characters authentically. Only real Germans can play Nazis. Novelists have had their book contracts cancelled for featuring protagonists whose ‘identity’ did not match their own. Helen Mirren should not be allowed to play Golda Meir in a movie, because she is not Jewish,¹²¹ and a number of Hollywood actors have apologised for portraying characters whose identity markers they did not share. In 2017, indigenous activists in Canada have forced the cancellation of an art show in Toronto that drew direct inspiration from indigenous art, although the artist did not belong to this community.¹²² In 2017, the editor of a publication of the Writers’ Union of Canada was made to resign because he had argued that “anyone, anywhere, should be encouraged to imagine other peoples, other cultures, other identities,” and to write about them.¹²³ *Bon Appétit*, the American culinary magazine, apologised for allowing a Gentile writer to publish a recipe for a traditional Jewish dessert. In the U.K., the *Guardian* has debated whether Jamie Oliver can and is allowed to cook jollof rice, a West African dish.¹²⁴ (It’s almost irritating that no one has yet asked whether US Americans, at least those of Anglo-Saxon and Northern European origin, should be allowed to make or eat pizza, given the long history of anti-Italian sentiments and oppression in the United States during the late 19th and early 20th centuries.)

In aesthetic terms, we are confronted with the question of the essence and boundaries of acting and literary imagination. The idea that one must have experienced something in order to write (act, paint) insightfully about it is not very convincing.¹²⁵ The demand

120 <https://www.ccdeia.com/playbook> [5 July 2024]. This pre-Trump II page has meanwhile been deleted.

121 Andrew PULVER: “Maureen Lipman attacks casting of Helen Mirren as former Israeli PM Golda Meir,” *The Guardian*, 5 January 2022, <https://www.theguardian.com/film/2022/jan/05/maureen-lipman-attacks-casting-of-helen-mirren-as-former-israeli-pm> [5 March 2026].

122 Alexander NAZARYAN: “White Painter Loses Art Show Over Cultural Appropriation Debate,” *Newsweek*, 5 May 2017, <https://www.newsweek.com/cultural-appropriation-outcry-succeeds-cancelling-gallery-show-white-painter-594924> [5 March 2026].

123 Jennifer SCHUESSLER: “Editor Resigns Over an Article Defending ‘Cultural Appropriation,’” *The New York Times*, 11 May 2017, <https://www.nytimes.com/2017/05/11/arts/editor-resigns-over-article-defending-cultural-appropriation.html> [5 March 2026]. Madison Smartt BELL: “Policing the Imagination,” *The Chronicle of Higher Education*, 17 May 2017, <https://www.chronicle.com/article/policing-the-imagination/> [5 March 2026].

124 Eromo EGBEJULE: “World Jollof Day: Jamie Oliver’s #ricegate and other scandals,” *The Guardian*, 22 August 2016, <https://www.theguardian.com/world/2016/aug/22/world-jollof-day-jamies-oliver-rice-scandals> [5 March 2026].

125 Cf. James O. YOUNG & Susan HALEY: “‘Nothing Comes from Nowhere’: Reflections on Cultural Appropriation as the Representation of Other Cultures,” in: *The Ethics of Cultural Appropriation*, ed. by James O. Young & Conrad G. Brunk, Malden / Oxford: John Wiley & Sons, 2009, 268–289, p. 277.

for authentic representation impoverishes artistic forms, reducing them to the affirmative duplication of the self—or, more precisely, a part of it. “Mme Bovary, c’est moi,” Flaubert famously said.¹²⁶ What astonishing presumption of a gender identity. Wouldn’t it have been better if Emma Bovary had written an autofictional book about herself? However, writing, painting and filmmaking are not only about self-expression and placing a monological image of one’s own identity in the cultural space. The novelist Lionel Shriver is right to argue that accusations of cultural appropriation threaten “our right to write fiction at all.”¹²⁷ The same is true for all forms of art. In political and moral terms, the question arises as to the role of art and culture in enabling us to adopt different perspectives—a prerequisite for living in a pluralistic society. Furthermore, the very idea of authentic group self-expression seems to operate dangerously close to “the oppressive falsehood that there is something natural, pre-given or fixed in advance for a group identity to be authentic to.”¹²⁸ The demand for “authenticity” in the representation of a group is just another expression for essentializing homogenization. Those who make accusations of cultural appropriation cannot help but be *terribles simplificateurs*. They remain trapped in the “dilemma of essentialism.”¹²⁹

A second main problem is the reductionist nature of the approach to authentic representation. In most cases, it only works if the actor, the character and the represented group are all reduced to a single characteristic that supposedly forms their identity. However, in Western societies at least, whether being gay is still a defining characteristic of a person’s entire life or personality is entirely up to the individual. The same applies to origin and religion¹³⁰ and all other formative conditions of one’s upbringing. Individuals may choose to continue or subvert their cultural traditions. (Of course, most people retain their skin colour—one more reason why especially the American cultural appropriation discourse is so fixated on ‘race’ and ethnicity.) But what about all the other features of individuals and characters? Who decides which characteristics of a complex personality must be represented ‘authentically’? What about the diversity of diversities?¹³¹ If the problem with cultural appropriation is that ‘stereotypes remain harmful’,¹³² what could be more stereotyping than the misguided notion

126 Cf. Yvan LECLERC: “Madame Bovary, c’est moi’, formule apocryphe,” in: *Centre Flaubert* [online], <https://flaubert.univ-rouen.fr/labo-flaubert/ressources-par-%C5%93uvre/madame-bovary/madame-bovary-cest-moi-formule-apocryphe/> [5 March 2026].

127 Lionel SHRIVER: “I hope the concept of cultural appropriation is a passing fad” (“What stories are ‘implicitly ours to tell,’ and what boundaries around our own lives are we mandated to remain within? I would argue that any story you can make yours is yours to tell, and trying to push the boundaries of the author’s personal experience is part of a fiction writer’s job.”). For a strong defence of authorial privilege and appropriation as something deeply tied to artistic practice, see Paisley REKDAL: *Appropriate. A Provocation*, New York / London: W. W. Norton & Company, 2021.

128 Nicholas H. SMITH: “Multiculturalism and Recognition,” in: *Handbuch Anerkennung*, ed. by Ludwig Siep, Heikki Ikäheimo & Michael Quante, Wiesbaden: Springer, 2021, 483–490, p. 485.

129 Cf. PATTEN: *Equal Recognition*, 38–68.

130 Charles TAYLOR: *A Secular Age*, Cambridge, MA: Harvard University Press, 2007.

131 See the Report of the UN Special Rapporteur in the field of cultural rights, United Nations General Assembly UN A/73/227 (25 July 2018), para. 72: “[T]here is a diversity of cultural diversities in each and every society.”

132 Cf. FEENEY: “Katy Perry’s ‘Geisha-Style’ Performance Needs to Be Called Out”.

that everyone is locked into one identity-shaping dominant culture, which outsiders cannot understand, represent, embrace, co-opt or develop further?

Let us take translation as an example. Translation is an access technique to cultural goods, and it is a primal form of cultural appropriation, with the task “to liberate the language imprisoned in a work in his re-creation of that work,” as Walter Benjamin famously described the “task of the translator”.¹³³ Remember the discussion about who should be entitled to translate Amanda Gorman’s poem *The Hill We Climb*, which she read at Joe Biden’s inauguration on 20 January 2021. One option would have been to use persons with suitable experience of translating American literature, as the poem is aimed at a broad American audience. However, the discourse surrounding cultural appropriation and representation led to Marieke Lucas Rijneveld, a white person and winner of the International Booker Prize, being stripped of her commission in the Netherlands.¹³⁴ Being non-binary did not help—they were the wrong race. In Germany, it was suggested that the poem should be translated by three young Roma and Sinti women. Although this did not work out, it raises the question of what exactly needs to be represented. How exactly is the required strange identity kinship of poet and translator to be played out? What qualities or personal experiences must the translator share with Amanda Gorman, the author? Which identity-making features are relevant? Her skin colour? Her gender? Her middle-class background? Her studies at an Ivy League university (Harvard, in this case)? Her ability to casually wear a buttercup-yellow Prada outfit to an American presidential inauguration and be recognised by *Vogue* as “a New Kind of Style Star”? When and in what regard do we have to share certain characteristics with someone we ‘represent’, such as concrete personal and collective experiences, cultural ties, ethnic affiliations and forms of socialisation, in order to be able to represent them appropriately? Or should we generally be sceptical about the idea that existential authenticity is an aesthetic¹³⁵ (and therefore political) virtue? It’s neither of those.

In the end, Amanda Gorman’s text was translated into German in quite a short time by three women, Uda Strätling, Hadija Haruna-Oelker and Kübra Gümüşay, only one of whom was a translator, the other two political scientists and publicists with some anti-racist street credibility. The result is—well.¹³⁶ Could the German publisher’s capital maximisation interests here have been aimed at something other than the appropriate mediation of poetry? To

133 Walter BENJAMIN: “The Task of the Translator” [1921], in: *Selected Writings*, vol. 1: 1913–1926, ed. by Marcus Bullock & Michael W. Jennings, Cambridge: Belknap of Harvard University Press, 1996, 151, 261 (originally published in Charles Baudelaire, *Tableaux parisiens. Deutsche Übertragung mit einem Vorwort über die Aufgabe des Übersetzers von Walter Benjamin*, Heidelberg: Weisbach, 1923, XVI: “Jene reine Sprache, die in fremde gebannt ist, in der eigenen zu erlösen, die im Werk gefangene in der Umdichtung zu befreien, ist die Aufgabe des Übersetzers”).

134 Alison FLOOD: “‘Shocked by the uproar’: Amanda Gorman’s white translator quits,” *The Guardian*, 1 March 2021, <https://www.theguardian.com/books/2021/mar/01/amanda-gorman-white-translator-quits-marieke-lucas-rijneveld> [5 March 2026].

135 YOUNG: *Cultural Appropriation and the Arts*, 51.

136 See e. g. Nico BLEUTGE: “Mehr juristische Rede als Poesie,” *Deutschlandfunk Kultur*, 30 March 2021, <https://www.deutschlandfunkkultur.de/amanda-gorman-the-hill-we-climb-den-huegel-hinauf-mehr-100.html> [5 March 2026].

what extent is the discourse on cultural appropriation a marketing strategy? And isn't this talk of cultural appropriation all the more amusing in the case of a poem when you consider that 20th and 21st century modern poetry, including the work of Amanda Gorman, is almost inconceivable without an extraordinary act of cultural appropriation: Ezra Pound's adoption of classical Chinese poetry in his epoch-making book *Cathay* (1915), which contains "translations" of works written in a language he was unfamiliar with?¹³⁷ Long live cultural mélange, hotchpotch, intermingling, and unauthorised translation and appropriation. Therefore, even if it were true that, as the protagonist and alter ego of the director in Andrei Tarkovsky's film *Nostalghia* (1983) claims, "poetry is untranslatable, like the whole of art," attempts to do so should nevertheless be measured by their aesthetic results and their ability to create a work of art in its own right, on the basis of the extent to which they succeed in revealing to us the power, beauty, richness and ambivalence of mimesis, expression, form, and meaning of the original poem, transforming them from the source language into our own and making them accessible within our cultural horizons, and not by the unfounded moral accusations of self-appointed cultural border guards.

Incidentally, the problem of translation forces us to question whether the discourse on cultural appropriation, which focuses on ownership and authenticity, takes its own premises seriously enough or stops halfway. After all, as we have discussed at least from Herder to Charles Taylor and the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, language is arguably the most important carrier of a particular culture. Wouldn't it therefore be a necessary consequence of the concept of cultural appropriation, to not only demand translators who belong to or are close to the 'identity' of the authors (or at least to certain aspects of this identity that are considered important), but rather to forbid outsiders from learning the language of insiders and prohibit appropriation through translation? Or is it the other way around? The very concept of translation invites us to turn the discourse on cultural appropriation upside down. In an Artforum roundtable, Homi K. Bhabha (who tends to find primordial, pre-political and fixed notions of identity and collectivity unconvincing¹³⁸) suggested to replace the term 'appropriation' by the term 'translation' which refers to a process of interpretation and of relocation.¹³⁹ That is closer to how culture works: understanding and misunderstanding, resignification, reinterpretation, mutual enrichment, hybridity, mixing, polyamory, taking and developing further, making the foreign your own and giving it back to all the others.

Finally, also the discourse of authentic representation only works consistently if it is applied evenly and in all directions. Jews are not permitted to play 'Aryans'. (We've been through this before.) Gay people are not allowed to play heterosexuals. Chimamanda Ngozi

137 Cf. Eliot WEINBERGER: "Introduction," in: *The New Directions Anthology of Classical Chinese Poetry*, ed. by Eliot Weinberger, New York: New Directions, 2003, xvii–xxvii.

138 BHABHA: *The Location of Culture*.

139 Michelle KUO, Homi BHABHA, Jacolby SATTERWHITE, Ajay KURIAN, Gregg BORDOWITZ, Joan KEE & Salome ASEGA: "Cultural Appropriation: A Roundtable," *Artforum* 55/10 (Summer 2017), <https://www.artforum.com/features/cultural-appropriation-a-roundtable-234323/> [7 April 2026].

Adichie can write about her Nigerian communities, but not about white Americans. Only a deeply devout male German Protestant is capable of performing Bach cantatas. (Bach was deeply committed to the idea that they presented a distinctive Christian perspective; he marked each of them SDG—*Soli Deo Gloria*.) Perhaps Samuel Koch, a well-known German actor and paraplegic, would not be permitted to play Schiller’s *Wallenstein*. The casting of British actor India Amarteifio, who has Ghanaian and German ancestry, as the British Queen Charlotte in the TV series *Bridgerton* is a clear misrepresentation of a deeply white and racist British institution, and distorts the audience’s historical awareness. How could Eva Hesse, as a young German, anti-fascist and revolutionary-minded female author, be allowed to translate Ezra Pound’s *Cantos*—Pound, who was not only one of the most important poets of the 20th century, but unfortunately also a lifelong toxic, fascist, anti-Semitic male bastard? Isn’t being an anti-Semitic fascist a cultural identity? Or, again, is there something wrong with the discourse of authentic representation?

6 A necessary extension: The reception side

At the beginning of this essay, I argued that interventions that criticise cultural appropriation restrict access to cultural goods, both in terms of production and reception. However, on closer inspection, this does not seem to be equally the case; the sphere of reception remains underemphasised. This seems to me to be unfounded in the logic of this discourse. Culture is always a collective endeavour. If you take the cultural appropriation argument seriously (which many of its users don’t actually do), the main problem is not that a producer from culture A makes use of culture B when creating a work, but that this work is widely received in culture A (or in any other culture non-B).

If groups enjoy collective ownership of their cultural products and artefacts, which restricts how people outside those groups can make legitimate use of them, then we must recognise that the main way to make use of cultural goods is to enjoy them, participate in creating them, and receive them as viewers, readers, eaters and dedicated followers of fashion.

Then that must stop. Ultimately, it is only queer Tibetan women who are permitted to express the queerness of Tibetan women through art or culture, and only queer Tibetan women can read or view these works and be inspired by them. Only Christian middle-class literature for middle-class Christians. No Philip Roth for you, if you’re not a neurotic and very male American East Coast Jew, and no Shakespeare in Yiddish,¹⁴⁰ or interpreted by a Japanese director like Akira Kurosawa. No jazz and blues for whities. No *phở bò* for Europeans (and certainly not for US Americans). No *weisswurst*, no *festbier*, no *dirndls* and no *lederhosn* and *wadlstutzn*¹⁴¹ for the

140 See Joel BERKOWITZ: *Shakespeare on the American Yiddish Stage*, Iowa City: University of Iowa Press, 2002; Jerome CHARYN: *Ravage & Son*, New York: No Exit Press, 2023.

141 Remember Scafidi’s argument about the close “link between clothing and personal identity”—“we are what we wear”? (SCAFIDI: “When Native American Appropriation Is Appropriate”). That’s why, as a Bavarian, I have to *be* and *live up to* my *lederhosn*, and you’re not allowed to? And no suits for members of the First Nations?

millions of non-Bavarians who visit Munich's Oktoberfest every year, especially if they are not white and catholic (and preferably politically reactionary). Furthermore, a flawed dialectic is at play here, which further aggravates the problem: as long as the term 'cultural identity' is used in an essentialist manner to denote group affiliation, the individual is at least left with their own group, which is permitted to engage with their cultural output and participate in their cultural practices. If one breaks free from the clutches of such untenable essentialisms, things only get worse for the cultural appropriation talk. If we are to understand the cultural identity of each person as a complex individual one (which is, of course, theoretically indispensable), then the discourse on cultural appropriation converges on a horizon in which everyone can express their own cultural identity, but no one else is permitted to listen or watch. Thus, the endpoint to which this discourse converges is an atomistic solipsism based on the idea that it is impossible to have any knowledge of a culture outside of one's own mind (and that any attempt to do so is a moral transgression). This, of course, is just another way of describing the death of every culture—the necrophilic core of cultural border patrols.

The reception argument becomes even more problematic when one considers historical developments, which complicates the situation further. Since accusations of cultural appropriation very often refer to "victimless" or "phantasmatic"¹⁴² identity crimes, i.e. the accusation is only made by people who themselves do not belong to the allegedly expropriated culture or group, this question can and must be asked. Is there anyone today who can claim to represent the culture that produced the poetry of the late Tang dynasty?¹⁴³ (Contemporary China—really?) Or Sophocles' Οἰδίπους Τύραννος? Who, then, is permitted to read and be inspired by these texts today? Can a toga-inspired fashion show only be staged if "the descendants of Roman senators [...] applaud"?¹⁴⁴ (Who exactly? And, by the way, what about the descendants of the toga-wearing middle class and lower classes in the long-lost Roman Empire, if you can find them?) Or is cultural appropriation no longer a problem when the referenced culture is extinct and there is no one left to speak for it or grant cultural licences?

At this point, the final horizon of the cultural appropriation discourse becomes clear once again, the state in which its idea, in the Hegelian sense, comes to itself: a society whose cultural dimension consists of prefabricated cages in which withering, barren local cultures revolve around themselves before they die of boredom. Because there are no fixed cultures, but "only political imaginaries of pure or impure cultural horizons,"¹⁴⁵ the cultural appropriation discourse is a fantasy of purity. It is an invitation to return to the premodern tribal mechanisms described by Mary Douglas in her 1960s book *Purity and Danger: An Analysis of Concepts of Pollution and Taboo*.¹⁴⁶ It concerns our species' favourite pastime: maintaining symbolic boundaries and separating things and people into their proper categories. It is not least this fantasy of

142 MICHAELS: "The Myth of 'Cultural Appropriation'. Even our own stories don't belong to us".

143 See, e. g. Angus C. GRAHAM (transl.): *Poems of the Late T'Ang*, New York: New York Review of Books, 2008.

144 SCAFIDI: "When Native American Appropriation Is Appropriate."

145 WERNER: "Introduction: The Dialectics of Cultural Hybridity," 23.

146 Mary DOUGLAS: *Purity and Danger: An Analysis of Concepts of Pollution and Taboo*, London: Routledge & Kegan Paul, 1966.

purity that the cultural container thinking of multiculturalism and its cultural appropriation discourse shares with the racist marriage bans in the notorious miscegenation laws:¹⁴⁷ Don’t mix. Do not love beyond the boundaries we set for you. Keep your container pure.¹⁴⁸

Ultimately, a discourse on cultural appropriation that takes its premises seriously must even prohibit ‘outsiders’ from merely observing and researching cultures that are ‘foreign’ to them and sharing their research findings with others.¹⁴⁹ The discourse must therefore resort to harsh forms of standpoint epistemologies—people from different groups, so the thesis goes, can never truly understand one another. Therefore, those who are comparatively privileged should defer to the self-descriptions, factual assessments and political demands of those who are comparatively marginalised (or more precisely: of their—often self-appointed—spokespeople and knowledge administrators).¹⁵⁰ This would not only tribalise science and humanities, but ultimately put an end to them. Far from merely appreciating the potential value of specific experiences and culturally mediated horizons of understanding, it would entail excluding the social inner workings of ‘cultures’ from the objective principles of scientific research and academic discourse and reducing them to self-narratives. All that would remain is a cacophony of voices talking about themselves, with no one from outside their immediate cultural environment able or permitted to listen to, to describe, analyse or hermeneutically interpret and translate them. Politically, such a move would have the further consequence of immunising the dominant narratives within the respective culture against criticism.

147 Cf. Peggy PASCOE: *What Comes Naturally. Miscegenation, Law and the Making of Race in America*, Oxford University Press, 2009, 117: “In other terms, race scientists invested the term ‘race’ with all the explanatory power we now associate with the term ‘culture’.”

148 SCAFIDI: “When Native American Appropriation Is Appropriate”.

149 See e. g. the debate in John BORROWS & Kent McNEIL (eds.): *Voicing Identity. Cultural Appropriation and Indigenous Issues*, Toronto / Buffalo / London: University of Toronto Press, 2022, especially John BORROWS & Kent McNEIL: “Introduction,” in: *ibid.*, 3–20, p. 4, and Michael ASCH: “Reflections on Cultural Appropriation,” in: *ibid.*, 139–154, pp. 139–140: “So ‘cultural appropriation’ narrowly defined [...] refers to ‘taking’ from an Indigenous culture by non-Indigenous academics. One might conclude this means by definition that any use of any aspect of Indigenous cultures by anyone who is not Indigenous constitutes appropriation and is therefore wrong. In other words, it might refer to a need to completely silence outsider voices that originate in the ‘dominating’ (not dominant) culture on any matter related to Indigenous culture (in the largest sense), regardless of what those individuals are saying.” See also the anonymously authored open letter opposing the appointment of the sociologist Alice Goffman to a visiting position at Pomona College (<https://docs.google.com/document/d/1Qhq9MDDSV7k3Ic7W-4imnf8XaJfHfFdiFriXHGnFFOeQ>): Goffman, who, being a ‘white woman’, did studies about Black men in a Philadelphia ghetto (in her highly acclaimed book *On the Run: Fugitive Life in an American City*, Chicago: University of Chicago Press, 2014), was accused of having “theorize[d] about and profit[ed] from Black lives while giving no room for Black academics to claim scholarship regarding their own lived experience.” But how has writing a good (anti-racist) sociological book enabled her to take away the space for Black academics to present their own good or even better sociological analyses about African-American young men who are subject to a high level of surveillance and police activity? Science is not a zero-sum game, and academic questions do not belong to anyone. At times, the cultural appropriation discourse gives reasons to believe there is some truth in Nietzsche’s problematic assertion that morality arose from resentment (Friedrich NIETZSCHE: *On the Genealogy of Morals*, transl. Michael A. Scarpitti, ed. by Robert C. Holub, London: Penguin Classics, 2013). The instrumental use of moral claims certainly did.

150 MOUNK: *The Identity Trap*, 130.

In summary, I therefore agree with Yascha Mounk's conclusion that a "consistent application of the language of cultural appropriation pushes us to ask absurd questions and draw the wrong conclusions. [...] In philosophical terms, cultural appropriation misidentifies the 'wrong-making feature' of unjust situations."¹⁵¹

7 The legal view

Before we look at these wrong-making features, let us take a sideways glance at the law, especially at Art. 27 (1) of the Universal Declaration of Human Rights (UDHR, 1948), which states that "[e]veryone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits." In a similar way, Article 15 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) guarantees "the right of everyone to take part in cultural life."¹⁵² Not only at first glance do these guarantees appear to contradict the strategies of private censorship implemented under the accusation of cultural appropriation.

a) *The structure of cultural human rights*

In this field, different forms of human rights (individual rights and collective rights) overlap and sometimes contradict each other in complex ways. Generally, human rights can be negative (rights to non-interference), or rights to protection, or performance rights (rights to benefits, infrastructures etc.). In relation to cultural rights, too, the state's obligations are obligations to respect, protect and fulfil.¹⁵³

At the heart of Art. 27 UDHR and Art. 15 ICESCR,¹⁵⁴ we have (1) classical individual negative (liberty) rights against the state. States have duties of non-interference in the freedom of cultural expression of individuals, e. g. through censorship. States must not exclude

151 Ibid., 156 and 159.

152 See also the International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (e) (vi – the right to equal participation in cultural activities) and the Convention on the Elimination of All Forms of Discrimination against Women, art. 13 (c – the right to participate in all aspects of social and cultural life) etc.

153 Elsa STAMATOPOULOU: *Cultural Rights in International Law. Article 27 of the Universal Declaration of Human Rights and Beyond*, Leiden / Boston: Martinus Nijhoff, 2007, 151. Committee on Economic, Social and Cultural Rights: General comment No. 21 (2009) on the right of everyone to take part in cultural life, para. 48 ("The right of everyone to take part in cultural life, like the other rights enshrined in the Covenant, imposes three types or levels of obligations on States parties: (a) the obligation to respect; (b) the obligation to protect; and (c) the obligation to fulfil. The obligation to respect requires States parties to refrain from interfering, directly or indirectly, with the enjoyment of the right to take part in cultural life. The obligation to protect requires States parties to take steps to prevent third parties from interfering in the right to take part in cultural life. Lastly, the obligation to fulfil requires States parties to take appropriate legislative, administrative, judicial, budgetary, promotional and other measures aimed at the full realization of the right enshrined in article 15, paragraph 1 (a), of the Covenant.").

154 See Committee on Economic, Social and Cultural Rights: General comment No. 21 (2009) on the right of everyone to take part in cultural life, para. 44–54.

individuals (as such or as members of groups¹⁵⁵) from taking part in cultural life and seeking access to cultural goods and practices they find worthy of their attention. This freedom applies both to the active creation of culture and works of art and the passive enjoyment of cultural life (e. g. enjoying museums, movies, food, singing songs in one’s own language). Moreover, states must not suppress individuals by means of a majority culture.¹⁵⁶

There are (2) negative group (liberty) rights against the state and corresponding negative state duties of non-interference in the freedom of cultural expression of groups¹⁵⁷ and (3) negative (equality) rights of cultural minority groups not to be discriminated against by the state, e. g. rights against forced assimilation or cultural oppression.¹⁵⁸ Thus, for example, cultural rights are violated if a state does not allow publications or radio programmes in a certain language used in the country.¹⁵⁹

Moreover, there are (4) individual rights to be protected by the state against dominant cultural groups and other non-state actors. States are not only obliged to promulgate and enforce legislation to prohibit discrimination based on (attributed) cultural identity, they have a general duty to protect (through the state’s regular discharge of police and justice functions) the exercise of the freedom to participate in cultural life, when it is under threat by non-state actors including individuals, groups, corporations and representatives of economic interests.¹⁶⁰ “It is not enough under Article 15 that governments themselves permit creative freedom. They must also ensure that the actions of quasi-public and maybe even private bodies do not infringe the rights of citizens protected by the provision.”¹⁶¹ It may therefore be a violation of the Covenant on Economic, Social and Cultural Rights e. g. if a state fails to protect an artist from threats by a religious group¹⁶² or from other forms of private censorship, including those based on unqualified accusations of ‘cultural appropriation’.

155 In the last analysis, the individual remains the bearer of “rights to cultural membership,” in Will Kymlicka’s phrase, see Will KYMLICKA: *Liberalism, Community and Culture*, Oxford University Press, 1991, cf. HABERMAS: “Struggles for Recognition in the Democratic Constitutional State,” 129.

156 See UN A/73/227 Report of the Special Rapporteur in the field of cultural rights, para. 75: “[T]he Special Rapporteur calls on States to: (a) Review laws and legal norms that discriminate against anyone on the basis of cultural [...] arguments.” Technically, this is an equality right (a right that guarantees equal citizenship, equality before the law, and freedom from discrimination) as much as a freedom (or liberty) right, see UN A/73/227 Report of the Special Rapporteur in the field of cultural rights, para. 68 (“the right to take part in cultural life, without discrimination”) and STAMATOPOULOU, *Cultural Rights in International Law*, 115 and 154 (“Non-discrimination and equality”). See on non-discrimination and equal treatment also Committee on Economic, Social and Cultural Rights: General comment No. 21 (2009) on the right of everyone to take part in cultural life, para. 21–24.

157 “Article 15 [ICESCR] [...] posits a community—whether subnational or national—as enjoying the right to practise and foster its way of life free from external interference” (O’KEEFE: “The ‘Right to Take Part in Cultural Life’ Under Article 15 of the ICESCR,” *International and Comparative Law Quarterly* 47/4 (1998), 904–923, p. 917).

158 STAMATOPOULOU: *Cultural Rights in International Law*, 116 and 163.

159 Ibid., 151.

160 Cf. *ibid.*, 123 and 155.

161 O’KEEFE: “The ‘Right to Take Part in Cultural Life’ Under Article 15 of the ICESCR,” 911.

162 STAMATOPOULOU: *Cultural Rights in International Law*, 151.

There may be (5) collective rights of cultural groups against the state to have their “integrity” protected,¹⁶³ including collective rights of cultural minorities to be protected by the state against discrimination by dominant cultural groups. For example, if the state fails to ensure that a certain linguistic group is able to teach its language in its private schools undisturbed by hostile individuals or groups may be in violation of the Covenant on Economic, Social and Cultural Rights. Finally, there (6) are (albeit comparatively weak) individual positive rights against the state to a ‘cultural infrastructure’ and to spending resources in order to facilitate and provide (equal) access to culture.¹⁶⁴

b) Human rights and the cultural appropriation discourse

Regarding the cultural appropriation discourse, however, the most important point is that the human “right freely to participate in the cultural life of the community” guarantees access to the cultural resources of others, rights to syncretism and cultural mixing, as well as the rights to re-interpret and recreate cultures.

Art. 27 (1) UDHR and Art. 15 ICESCR are based on an individualistic interpretation of culture, mirroring the normative individualism of the human rights idea. The right to take part in cultural life is a freedom right.¹⁶⁵ Cultural rights may be exercised by a person (a) as an individual, (b) in association with others, or (c) within a community or group, as such.¹⁶⁶ Individual protection, however, is the main focus. In this sense, the Report of the UN Special Rapporteur in the field of cultural rights (2018) calls on all relevant bodies, including states, international and civil society organizations, experts, academics and individuals

to: [...] [s]ystematically challenge practices, norms, discourses and interpretations that reduce the cultural choices of persons. [...]

163 See O’KEEFE: “The ‘Right to Take Part in Cultural Life’ Under Article 15 of the ICESCR,” 918: “Governments must take active measures to preserve and foster minority and especially indigenous cultures.” It is questionable, however, whether this is a genuine collective/group right, or a right that primarily protects the integrity of individuals (see Amy GUTMANN (ed.): *Multiculturalism. Examining the Politics of Recognition*, Princeton University Press, 1992, and STAMATOPOULOU: *Cultural Rights in International Law*, 164).

164 “Fulfilling these rights means that the state must take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of those rights. Thus, the state, for example, should take measures to make available education and training in the arts, create museums, subsidize the arts, facilitate radio and television broadcasting in minority languages and other such measures (the principle of availability)” (STAMATOPOULOU: *Cultural Rights in International Law*, 123; cf. O’KEEFE: “The ‘Right to Take Part in Cultural Life’ Under Article 15 of the ICESCR,” 907, and UN A/73/227 Report of the Special Rapporteur in the field of cultural rights, para. 77). It is debatable whether there are also collective positive rights to ‘real equality’ of the culture of a majority and the cultures of minorities, i.e. rights to ‘affirmative action’ in this regard, cf. STAMATOPOULOU: *Cultural Rights in International Law*, 117.

165 Committee on Economic, Social and Cultural Rights: General comment No. 21 (2009) on the right of everyone to take part in cultural life, para. 6.

166 Ibid., para. 9.

To improve respect for cultural diversity within the framework of universal rights, States should:

(a) Take the steps necessary to bolster *the right of each person to freely choose and have cultural references and to identify with multiple and simultaneous cultural groups or none, to participate in cultural life and to be able to change their choices and exit groups, [...]*

e) Recognize and value cultural diversity, respect its free development within the framework of universal human rights and *avoid abusively restricting its expression; recognize and respect cultural dissent, syncretism and cultural mixing*, as well as the rights to re-interpret and recreate cultures; [...] and

g) Create an enabling environment to enhance access to and participation in cultural life, as well as *access to the cultural resources of others*.¹⁶⁷

In a similar sense, the 2001 UNESCO Universal Declaration on Cultural Diversity also states in Article 5 that “all persons have *the right to participate in the cultural life of their choice and conduct their own cultural practices*, subject to the respect for human rights and fundamental freedoms.” The “freedom to choose in which culture(s) and cultural life to participate is crucial, especially in its significance for individuals in our multicultural societies. If there is a clash between an individual wanting to create an artwork, write a piece of literature etc. and the community perceiving this as against its tradition and wanting to suppress it, then the state must step in to ensure that the individual will be able to participate in cultural life by creating what expresses him/her.”¹⁶⁸ If cultural appropriation is defined as “taking a cultural element from a people and using it out of context or without context at all,” and if this is considered “something we all have a responsibility to prevent,”¹⁶⁹ then this simply negates the human right of each person to freely choose their cultural references, including the cultural resources of others, the rights to syncretism, to cultural mixing and to re-interpret and recreate cultures. Conversely, legal analysis shows that the task cannot be to “draw the line between cultural inspiration” (which may be acceptable) “and cultural appropriation”¹⁷⁰ (which appears to be a *malum in se*).

Looking at the main components of the right to participate or take part in cultural life as defined in the International Covenant on Economic, Social and Cultural Rights, the term ‘participation’ “covers in particular the right of everyone—alone, or in association with others or as a community—to act freely, *to choose his or her own identity, to identify or not with one or several communities or to change that choice, [...] to engage in one’s own cultural practices and to express oneself in the language of one’s choice*,” and “*the right to seek, receive and impart information and ideas of all kinds and forms including art forms, regardless of frontiers*

167 UN A/73/227 Report of the Special Rapporteur in the field of cultural rights, para. 75–77 (italics T. G.).

168 STAMATOPOULOU: *Cultural Rights in International Law*, 129–130.

169 DAVIS: *Questioning Cultural Appropriation*, Introduction.

170 SCAFIDI: “When Native American Appropriation Is Appropriate”.

of any kind."¹⁷¹ The term 'access' covers, among other things, the right of everyone—alone, in association with others or as a community—"to benefit from the cultural heritage and the creation of other individuals and communities."¹⁷²

Among the core human rights obligations of states in this field are the duties to establish effective mechanisms and institutions in order "to respect the right of everyone to identify or not identify themselves with one or more communities, and the right to change their choice" and "to eliminate any barriers or obstacles that inhibit or restrict a person's access to the person's own culture or to other cultures."¹⁷³ The states' obligation to fulfil the right of everyone to take part in cultural life includes the obligation to adopt "policies enabling persons belonging to diverse cultural communities to engage freely and without discrimination in their own cultural practices and those of others, and to choose freely their way of life."¹⁷⁴ In this regard, the states' obligation to protect is to be understood as requiring states to take measures to prevent third parties from interfering in the exercise of these rights.¹⁷⁵ In other words, states have a principled human rights obligation to take action against those forms of private censorship that use the accusation of 'cultural appropriation'. In most of its forms, the cultural appropriation discourse is an attack on the human rights guarantee to take part in cultural life.

We can therefore draw an interim conclusion: The concept of 'cultural appropriation' is inconsistent, misleading and partly harmful. It does not stand up to analytical scrutiny and is useless as a tool of criticism. From a legal standpoint, the discourse surrounding cultural appropriation is simply antagonistic and threatens the human right of each individual to freely choose their cultural references, identify with multiple cultural groups simultaneously, access the cultural resources of others, and reinterpret and recreate cultures—in other words, to adopt elements of a culture to which they do not belong. This finding shifts the burden of argumentation and proof onto those making accusations of unjustifiable use of the 'culture' of others. The latter can only be the case in exceptional circumstances.

171 Committee on Economic, Social and Cultural Rights: General comment No. 21 (2009) on the right of everyone to take part in cultural life, para. 15 and 49 (italics T. G.).

172 Ibid., para. 15. See also para. 16 (b): "Accessibility consists of effective and concrete opportunities for individuals and communities to enjoy culture fully, within physical and financial reach for all in both urban and rural areas, without discrimination," and para. 49.

173 Ibid., para. 55 lit. b and d (italics T. G.).

174 Ibid., para. 52.

175 Committee on Economic, Social and Cultural Rights: General comment No. 21 (2009) on the right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), United Nations Economic and Social Council, E/C.12/GC/25, 21 December 2009, para. 50.

III What can be the wrong-making features?

Ultimately, I agree with James O. Young that there is nothing inherently wrong with cultural appropriation and that practices labelled as such can very often be justified on aesthetic as well as moral and legal grounds.¹⁷⁶ However, some cases of so-called cultural appropriation undoubtedly constitute real injustices, which do not lie in the adoption of cultural practices as such. The misguided accusation of cultural appropriation often conceals other, more appropriate critical concepts, such as exploitation, oppression, disregard, and denial of recognition. These concepts need to be clarified and rescued from the rubble of the cultural appropriation discourse. What are the different ‘wrong-making features’ of certain specific forms of cultural appropriation?

Let us begin with James O. Young’s suggestion that an act of cultural appropriation may be wrong in basically two ways. It may cause unjustifiable harm, or it may be unjustifiably offensive.¹⁷⁷

1 Harm

Some acts of cultural appropriation have been simple acts of theft or extortion. Consider, for example, the restitution claims relating to art looted by the Nazis or during colonial regimes. But this is not the topic of this essay. Appropriation of intangible goods or practices, however, could harm members of a culture without depriving them of any object they own. Hate speech using cultural insignia is harmful.¹⁷⁸ At least theoretically, subject appropriation could deprive insiders of an audience and, consequently, harm their economic interests. It could even restrict their ability to preserve their culture.¹⁷⁹ In summary:

The most obvious way in which cultural appropriation could assault a culture would be by creating or perpetuating harmful misrepresentations of a culture or its members. For example, artworks that involve subject appropriation could present a distorted picture of a culture. [...]. These false or distorted impressions of a culture could be harmful in at least a few ways. They could create or perpetuate stereotypes that lead to discrimination against individual members of a culture. Harm of this sort might limit the economic or educational opportunities of mem-

176 YOUNG: *Cultural Appropriation and the Arts*, ix. Especially calling something an example of subject appropriation is not a reason to think that it is morally objectionable, cf. YOUNG & HALEY: “‘Nothing Comes from Nowhere’: Reflections on Cultural Appropriation as the Representation of Other Cultures”.

177 YOUNG: *Cultural Appropriation and the Arts*, 18, 106–151.

178 Maybe even ignorant attempts at homage can be harmful, cf. SCAFIDI: “When Native American Appropriation Is Appropriate”.

179 Cf. YOUNG: *Cultural Appropriation and the Arts*, 18, 106.

bers of a culture. More insidiously, members of a culture may come to see themselves and their culture as they appear to outsiders.¹⁸⁰

Being confronted with how one's own culture is perceived by outsiders is an inevitable and ubiquitous situation for members of any particular culture in pluralistic (and, in this sense, multicultural) societies. As such, it cannot constitute normatively relevant harm. One of the conditions for the functioning of pluralistic societies is that they require their members to have a robust awareness that not everyone shares their own particular culturally conditioned perspectives, values and expectations—and also that not everyone even understands them sufficiently (nor needs to understand them). Openness towards others and their cultural particularities is a virtue that is important in pluralistic societies and should be encouraged, but the behavioural obligations associated with it are, for the most part, supererogatory in nature. They go beyond what we owe to each other in a strict sense. By contrast, the reproduction of negative cultural stereotypes that lead to the discrimination of individuals from a particular culture is undoubtedly harmful and generally leads to obligations to refrain from actions of this kind. However, this is not always the case,¹⁸¹ so that the reasons for such a claim should be comprehensible. From the legal analysis above (II.7), we were able to take away the principle that the burden of proof lies with the party that wishes to exercise private censorship using the cultural appropriation argument. The right to free access to culture is too important a universal legal (and moral) right to be restricted by mere assertions. Whether someone claims to feel harmed, or a third party claims that members of a particular cultural group feel, could feel, or should feel harmed or offended cannot be the deciding factor; rather, they must be able to present intersubjectively plausible reasons for doing so. Otherwise, the cultural appropriation discourse will all too easily function as a simple power generator, enabling individuals who create themselves as advocates of imaginary injuries to elevate themselves 'morally' above others, gain advantages in the attention economy and accumulate cultural capital. We cannot take any assertion at face value here. In nineteenth-century Germany, Richard Wagner was concerned that Jews might spoil the authenticity of German musical culture¹⁸² (while, at the same time, he was stealing from Mendelssohn Bartholdy). So, the question has to be: What form of injury are we talking about exactly? For some, the assertion that cultural appropriation prevents certain groups from developing an undistorted self-image and a self-discovered identity may come easily, but it can rarely be made plausible or even verified intersubjectively. And even if it is con-

180 Ibid., 18, 107. See e. g. on how the circulation and performance of racist blackface images and sounds in the making of popular music and culture since the nineteenth century impact on Black people, and on the inherent violence embedded in these images and their circulation, Matthew D. MORRISON: *Blacksound: Making Race and Popular Music in the United States*, Oakland: University of California Press, 2024.

181 For the (problematic) thesis (using Canada as an example) that works by white people on minority issues are generally harmful in a social context in which ethnic minorities are not equal members of society and their artists are not given an equal voice, see the very brief explanation by Thomas HURKA: "Should Whites Write About Minorities?," in: *Principles: Short Essays on Ethics*, Toronto: Harcourt Brace, 1994, 183–186.

182 Richard WAGNER: "Das Judenthum in der Musik," *Neue Zeitschrift für Musik*, 3 and 9 September 1850, 101–107, 109–112.

ceivable that a culture can cease to function if its insignia are appropriated,¹⁸³ the question arises as to which cultural forms of expression actually qualify for such institutional status.

Most forms of cultural appropriation do not involve harm or wrongdoing. In many cases, appropriation “may produce aesthetically valuable works of art that reflect well on the originating culture.”¹⁸⁴ The available evidence suggests that subject appropriation does not restrict the opportunities of insiders,¹⁸⁵ and cultural communities can often benefit from acts of cultural appropriation that draw public attention. They often can even profit economically from increased demand for its original designs and forms, and, in the economics of attention, from a raised profile.¹⁸⁶ It therefore depends on the specific context. Finally, one must take into account the potential harm resulting from outsiders (the rest of the world) not engaging with and appropriating elements of a culture, not connecting with it, not accepting or valuing it or developing it further, not bringing a fresh perspective on it, not translating its elements, not enjoying it, but instead treating the culture as a petrified prison of the other, leaving it to exhaust itself.

2 Profound offence

Following the general idea of the legal philosopher Joel Feinberg,¹⁸⁷ James O. Young has suggested that profoundly offensive acts of cultural appropriation *can* be wrong. A profound offence is one that offends one’s moral sensibilities in an intersubjectively comprehensible way. Like Feinberg (who aimed to establish the more specific thesis that it is possible to affirm that preventing offences is a legitimate purpose of criminal law), Young only addresses ‘profound’ offences. These are not mere nuisances, but rather negative mental states that are deep, profound, serious and strike at a person’s core values or sense of self.

What Susan Scafidi calls “significance” (or “sacredness”¹⁸⁸), and what Young refers to as “The Sacred,”¹⁸⁹ might become relevant here. Is what you are appropriating a central element of a culture’s self-description, such as a holy object or a practice like a ceremonial

183 See Elizabeth Burns COLEMAN: *Aboriginal Art, Identity and Appropriation*, Aldershot: Ashgate, 2005, 117–126, and, critically, YOUNG: *Cultural Appropriation and the Arts*, 121–122.

184 See YOUNG: *Cultural Appropriation and the Arts*, 18, 111 (quote), naming Picasso’s appropriation from West African cultures and even Amiri Baraka’s concession that Bix Beiderbecke’s ‘white’ appropriation of jazz (ibid., 111) “served to place the Negro’s culture and Negro society in a position of intelligent regard it had never enjoyed before” (cf. LeRoi JONES [Amiri Baraka]: *Blues People: Negro Music in White America*, New York: William Morrow and Company, 1963, 151).

185 YOUNG: *Cultural Appropriation and the Arts*, 116, giving the example of Paul Simon’s appropriation of the music of South Africa’s townships leading to an explosive increase in interest in South African music and huge opportunities for musicians from South Africa.

186 SCAFIDI: “When Native American Appropriation Is Appropriate”.

187 Joel FEINBERG: *The Moral Limits of the Criminal Law*, vol. 2: *Offense to Others*, Oxford University Press, 1985.

188 SCAFIDI: *Who Owns Culture?*, 4, 39, 149. Cf. ibid., 114, that “[t]he misappropriation of certain cultural products, often those that the source community considers sacred, secret, or exclusive to members of the community, has the potential to cause significant harm at several levels.”

189 YOUNG: *Cultural Appropriation and the Arts*, 141.

dance? In this perspective, an act of cultural appropriation could be offensive because it might be sacrilegious¹⁹⁰ or desecrating. Not every cultural or religious allusion falls under this category. Jean Paul Gaultier's Chic Rabbis collection, styled with Hasidic-inspired side curls,¹⁹¹ may raise a few eyebrows in this regard, but would hardly qualify as sacrilegious.

Once again, we cannot take any assertion at face value. Whether an act of cultural appropriation really "can cause a profound offense," whether it really has "the potential to destabilise entire worldviews, affront core values, and challenge a sense of self,"¹⁹² is an open question. Most acts of cultural appropriation do not cause such profound challenge. In a pluralistic society (in which the legal system is tasked with guaranteeing the rights of all cultural groups not to be discriminated against by the state and private actors) cannot avoid expecting individuals (as individuals and as members of collectives) to accept that others do not share their background assumptions, views, beliefs and practices, even if they themselves attach great, or even sacred significance to them. Furthermore, we should not forget that irony, satire, mockery, and deliberate transgressions can be important forms of emancipatory social criticism, even if they refer to actual or perceived characteristics of groups, whether from within or without. Living in a pluralistic world means developing and maintaining one's worldviews, core values and sense of self without expecting the social environment to affirm and stabilise them permanently. In general, insiders bear primary responsibility for perpetuating their culture. If you want your culture or subculture to exist, then live it. In any case, as has been demonstrated, the basic forms of social recognition that every group can expect for their way of life do not, in themselves, support the prohibition of cultural appropriation.

However, there is one notable exception here, which concerns the "non-simultaneity"¹⁹³ of historical development and social modernisation. The idea that a culture can cease to function if its insignia are adopted or appropriated by others is more likely to apply to cultural groups that we want or feel obliged to protect from the usual rules of modern pluralistic societies for various reasons. Examples may include indigenous communities and perhaps even Hasidic Jews in Israel or Williamsburg—communities for which assimilation poses the main threat. Many examples of *prima facie* problematic forms of cultural appropriation originate from this area. The problem with this approach lies in the dialectic of paternalistic protection and tutelage—a topic which would exceed the scope of this essay. Nevertheless, indigenous cultures enjoy a special status under international law, which provides particularly strong protection for the integrity of their cultural way of life. Indigenous peoples have the recognised right to act collectively to ensure respect for their right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions. It is acknowledged that they are to be "protected, in order to prevent the degradation of their particular way of life, including their [...] cultural identity" and

190 Ibid., 26. See *ibid.*, 133–134, on cultural products which have a special sacred or cultural significance.

191 SCAFIDI: "When Native American Appropriation Is Appropriate".

192 BUCAR: *Stealing my religion. Not just any cultural appropriation*, 209 (for religious appropriation).

193 Ernst BLOCH: *Erbschaft dieser Zeit* [1935], Frankfurt am Main: Suhrkamp, 1973, 104 ("Ungleichzeitigkeit"); Engl. *Heritage of our Times*, transl. Neville and Stephen Plaice, Cambridge: Polity Press, 1991.

that “[t]he strong communal dimension of indigenous peoples’ cultural life is indispensable to their existence.”¹⁹⁴ Cultural appropriation from indigenous cultures therefore may pose special problems. However, we must also consider whether a specific cultural expression, and particularly its exclusivity, is truly essential to the traditional, identity-defining self-perception. Casinos on tribal land do not really fit into this category. The same may apply to items offered by the community itself on the market. In general, the statements made by individuals acting as members and representatives of a culture regarding the insignia that form their identity may carry great weight. However, they must always be subjected to plausibility checks (quite apart from the fact that they may be controversial within the reference culture itself).

The offence argument is not a sure-fire winner either, even where it applies in principle. According to Feinberg, for the application of the offence principle, mediating maxims and balancing tests must be devised to weigh-up the seriousness of the inconvenience caused to the offended party against the reasonableness of the offending party’s conduct.¹⁹⁵ Even in cases when insiders are reasonably offended by acts of cultural appropriation, the right to cultural participation carries considerable weight here on the ‘offending’ party’s side. And again, because the use, referencing and further development of other people’s cultural practices is protected by human rights, the burden of argumentation and proof for the accusation that someone is making unjustifiable use of certain elements of the ‘culture’ of others lies with the accuser. Although profoundly offensive acts of cultural appropriation can be *prima facie* wrong and deserve to be taken seriously, they often are not wrong on balance, because in a pluralist society nobody can have the right never to be offended. Furthermore, an artwork may have a degree of aesthetic and/or social value that can counterbalance the offence felt by the members of a culture. This will be less the case if performances cause offence for the purposes of entertainment or in order to maintain cultural hegemony by devaluing others. But in many, if not in most cases, the reasons we might have for thinking that offensive acts of subject or content appropriation are wrong are, on balance, defeasible.¹⁹⁶

194 Committee on Economic, Social and Cultural Rights: General comment No. 21 (2009) on the right of everyone to take part in cultural life, para. 36–37. See also the United Nations Declaration on the Rights of Indigenous Peoples.

195 Cf. FEINBERG: *The Moral Limits of the Criminal Law*, vol. 2: *Offense to Others*. In Feinberg’s summary (ibid., XIII): “The seriousness of the offensiveness must be determined by (1) the intensity and durability of the repugnance produced, and the extent to which repugnance could be anticipated to be the general reaction to the conduct that produced it; (2) the ease with which unwilling witnesses can avoid the offensive display; and (3) whether or not the witnesses have assumed the risk themselves of being offended. These factors must be weighed as a group against the reasonableness of the offending party’s conduct as determined by (1) its personal importance to the actor himself and its social value generally; (2) the availability of alternative times and places where the conduct would cause less offense; and (3) the extent, if any, to which the offense is caused by spiteful motives.”

196 YOUNG: *Cultural Appropriation and the Arts*, 134–140, 152.

3 Devaluation, disrespect, humiliation and denied recognition

Using, appropriating or distorting cultural symbols or practices to devalue, humiliate or demean others, or to demonstrate the hegemony or supremacy of one's 'own' culture, is clearly wrong. Expressing deeply prejudiced and hurtful ideas about social groups is wrong. However, if criticism that demeans the culture of others is necessary to highlight practices of inequality, exclusion, oppression or violence within that culture, the situation may be different. Again, we should not forget that irony, satire, ridicule and deliberate transgression can be important forms of social criticism, even when directed at the actual or perceived characteristics of groups. If you see social ontology as being defined by a collective struggle for recognition, as many do, the problem with some forms of cultural appropriation that disregard, humiliate, and deny recognition to the cultures from which they take is the devaluation, disregard, humiliation, and denial of recognition rather than the appropriation itself.

Cultural appropriation may be criticisable if the attitude of the recipients expresses a sense of cultural superiority and a lack of respect for the culture of origin.¹⁹⁷ Failing to acknowledge the sources when co-opting cultural elements and forms of expression is very often an objectionable offence.¹⁹⁸ Conversely, from this perspective, an act of cultural appropriation can also be an act of cultural appreciation. A procedural virtue of democratic institutions is in fact measured by their capacity for respectful interaction with cultural minorities¹⁹⁹ and the cultures of others. Individual cultural rights, as protected by the international human rights regime aim at "an atmosphere of mutual understanding and respect for cultural values."²⁰⁰ However, recognition theory (unlike the agents of the cultural appropriation discourse) realises that "there is no possibility of normatively demanding the positive evaluation of cultural ways of life. At best, we can here speak only of the readiness to take note of the specific qualities of other cultures such that their value can then be examined."²⁰¹

In reality, this readiness is evident in many cases of so-called cultural appropriation, and is expressed through the adoption and adaptation of cultural practices. It would be difficult to accuse a German or Swiss white boy or girl who wear dreadlocks and play reggae music out of lifelong enthusiasm for Rastafarian culture of disregarding or denigrating their desired and intended culture. Chasing them off the stage with the cultural appropriation argument²⁰² only reflects fantasies of ethnic purity. Or consider the case

197 Cf. James O. YOUNG: "Profound Offense and Cultural Appropriation," *The Journal of Aesthetics and Art Criticism* 63 (2005), 135–146, and YOUNG: *Cultural Appropriation and the Arts*, 129–151.

198 YOUNG: *Cultural Appropriation and the Arts*, 140.

199 HONNETH: "Redistribution as Recognition: A Response to Nancy Fraser," 166.

200 Committee on Economic, Social and Cultural Rights: General comment No. 21 (2009) on the right of everyone to take part in cultural life, para. 2.

201 HONNETH: "Redistribution as Recognition: A Response to Nancy Fraser," 167.

202 Cf. "Weißer Musiker mit Dreadlocks darf nicht in Zürcher Bar spielen," *Der Spiegel online*, 18 August 2022, <https://www.spiegel.de/kultur/musik/zuerich-weisser-musiker-mit-dreadlocks-darf-nicht-in-zuercher-bar-spielen-veranstalter-fuehlten-sich-unwohl-a-9d13e98c-c679-4b8b-ada6-dee532f20e86> [5 March 2026].

of Peter Fox.²⁰³ The Berlin-based white German singer Peter Fox was criticised by the journalist Malcolm Ūzoma Ohanwe for drawing too heavily on South African music, especially the Amapiano genre, in his successful track “Zukunft Pink,” without showing sufficient appreciation for this influence. Fox responded by saying that he was, of course, aware of his combination of Amapiano elements with “the crystal-clear morning dew over the vastness of Brandenburg” and that he had acknowledged his musical inspirations in the credits of the music video, mentioning various South and West African artists. The ‘normsender’, as we call them in legal sociology, was satisfied,²⁰⁴ and everyone seemed happy. However, questions remain: What makes Mr. Ūzoma Ohanwe’s happiness interesting in this context, and why does he presume to speak for the South African Amapiano community? I suppose he might have a stronger claim than I do, but nevertheless.

So how does real recognition work? If you conceptualise today’s struggles over identity, difference, and experiences of social injustice with the help of recognition theory (following authors such as Axel Honneth, Arto Laitinen or Heikki Ikäheimo), the idea is that cultural minorities increasingly struggle for recognition of their collective value convictions, cultures and achievements.²⁰⁵ In this case, I assume that the form of recognition we are talking about here—“cultural appreciation,” whereby a culture, tradition or practice is esteemed for its own sake and recognised as socially valuable²⁰⁶—requires a much more robust, sustainable and institutionalised implementation. At least it must take the form of direct or public communication. A proxy discussion is not enough. However, there are many instances of highly institutionalised and habitual forms of recognition and affirmation of cultural origins and influences. The widespread recognition of the paramount importance of the African-American musical tradition in the jazz scene since the 1960s is just one example of this. In any case, the assumption that intercultural recognition can only be achieved through capitalist commodity circulation and thus through property rights, as Susan Scafidi argues in her thesis on the “identity tax,”²⁰⁷ seems unconvincing.

203 Felicitas BOELL: “Peter Fox reagiert auf Vorwürfe der kulturellen Aneignung zu ‚Zukunft Pink‘ (feat. Inéz),” *musikexpress*, 27 October 2022, <https://www.musikexpress.de/peter-fox-reagiert-auf-vorwurfe-der-kulturellen-aneignung-zu-zukunft-pink-feat-inez-2208801/> [5 March 2026]. Paul KRUPPA: “Peter Fox reagiert auf Kritik zu ‚Zukunft Pink‘,” *hiphop.de*, 25 October 2022, <https://hiphop.de/magazin/news/peter-fox-reagiert-auf-kritik-zu-zukunft-pink-404406> [5 March 2026].

204 Whether Ohanwe’s further assumption is correct, namely that Fox’s economic success with his Amapiano song comes at the expense of Amapiano musicians’ opportunities to find a German audience, or whether, as is so often the case, the opposite is true and the song can serve as a market opener, remains an open question.

205 HONNETH: “Redistribution as Recognition: A Response to Nancy Fraser,” 115.

206 Ibid., 167. See that recognition in this sense implies a positive estimation or attitude, SMITH: “Multiculturalism and Recognition,” in: *Handbuch Anerkennung*, ed. by Ludwig Siep, Heikki Ikäheimo & Michael Quante, Wiesbaden: Springer, 2021, 483–490, p. 484. See also Arto LAITINEN & Onni HIRVONEN: “Recognition, Identity, and Difference,” in: *Handbuch Anerkennung*, ed. by Ludwig Siep, Heikki Ikäheimo & Michael Quante, Wiesbaden: Springer, 2021, 459–468.

207 SCAFIDI: *Who Owns Culture?*, 7–8: “In order for an ethnic, regional, social, or cultural group to register upon the American mental landscape, then, the nation as a whole first extracts what might be termed an identity tax. This tax is payable to the public domain in the form of distinctive cultural products, including cuisine, dress, music, dance, folklore, handicrafts, healing arts, language, and images. [...] In many cases, consumption of

Finally, a little *ceterum censeo*: The South African Amapiano style which was partly appropriated by Fox is a hybrid of deep house, jazz, and lounge music, with many non-African influences, including those of white artists. Have we ever asked the Amapiano community the same questions that were asked of Peter Fox? And why not?

4 Misrepresentation

Alternatively, an act of appropriation could be offensive if it misrepresents the culture of those involved. There is a reasonable objection to travesties and caricatures inflicted on different identity groups by poorly conceived and executed texts, performances, films and other cultural works. This objection is even stronger when it comes to representations that perpetuate derogatory or distorted stereotypes. Much of what is criticised as blackface falls into this category. Take old Hollywood Westerns, for example, which depict Native Americans as cruel and mendacious. Just look at *The Searchers* by John Ford.²⁰⁸ Although Edward Said strongly rejects essentialism and standpoint epistemology with regard to cultures, his book on ‘Orientalism’²⁰⁹ demonstrates how members of a dominant culture, particularly in a colonial context, are structurally prone to creating stereotypes about other cultures that are charged with undercurrent desires but ultimately contemptuous. Therefore, Axel Honneth rightfully claims that struggles for recognition aim to change a country’s majority culture by overcoming stereotypes and ascriptions, in order to win social recognition for one’s own traditions and way of life.²¹⁰

The premise of the misrepresentation argument is that outsiders who engage in subject appropriation necessarily present a distorted view of insiders and their culture.²¹¹ “These misrepresentations can be harmful in a variety of ways. Most obviously, outsiders could create or perpetuate harmful stereotypes that hurt members of a culture”²¹² and set back

these cultural products is the first—or indeed only—contact that many Americans have with cultural groups other than their own.” She adds: “Were it not for their cultural products, many groups would remain largely invisible. When cultural products enter the marketplace or otherwise become accessible to outsiders, society at large claims the right to sample them and in return recognizes a group identity constructed from a simplified set of defining characteristics. This identity is necessarily limited [...] Cultural products do, however, provide a starting point for recognition of the source community as well as a means of allowing outsiders a degree of participation in and appreciation of that community. [...] Wherever cultural groups or their everyday art forms come into contact with the general public, they enrich the public domain of American culture and work to establish their own communal identities within it.”

208 Cf. Robert B. PIPPIN: *Hollywood Westerns and American Myth. The Importance of Howard Hawks and John Ford for Political Theory*, New Haven / London: Yale University Press, 2010, 104.

209 Edward SAID: *Orientalism* [1978], London: Penguin, 2003.

210 HONNETH: “Redistribution as Recognition: A Response to Nancy Fraser,” 118.

211 On the other hand: Why should one not trust that the bad, misrepresenting, ‘inauthentic’ copies of intangible cultural assets regularly trigger a search for ‘the real thing’, the cultural original, at least among a section of the audience whose recognition is perhaps more important (a desire, of course, that a properly thought-through cultural appropriation thesis, concerned with the preservation of cultural cages, would have to prohibit all the more)?

212 YOUNG: *Cultural Appropriation and the Arts*, 24.

their interests (as we saw above under 1). As mentioned above, this may be the case with derogatory stereotypes. Moreover, as James O. Young points out, there is a danger that the aesthetic rubbish produced by outsiders will give a wide audience a false picture of the insiders’ culture.²¹³

However, the question arises as to whether misrepresentation is a critical category in itself. We should begin noting that the nature of the object of representation is often a matter of debate in living cultures. Furthermore, every development in intangible culture, every syncretism and every cultural innovation necessarily misrepresents tradition. “A good appropriation,” Jens Balzer writes, “expands the spectrum of cultural possibilities [...]. A bad appropriation, on the other hand, is one that accepts and consolidates seemingly predetermined identities, aesthetically exploiting existing power relations and thus cementing them politically.”²¹⁴ He has a point. The prohibition of misrepresentation is a form of stereotyping in itself, entailing reified practices, cultural stagnation, and the preservation of dominance relationships and hegemonies inherent in traditional practices and images. Ultimately, we must ask where the idea comes from that we have to ‘represent’ ourselves or others in a prescribed manner at all. Why should we have such duties, and on what principles? We tell stories and create images about ourselves and others. Sometimes we capture something essential; sometimes we don’t. Misrepresentations can be criticised and confronted with other representations. Our lives and what we, for better or worse, consider to be our ‘identities’ are too tangled and complex to be easily represented anyway. In the end, however, discussing misrepresentation adds nothing to the analysis. Misrepresentation is only problematic when it is accompanied by devaluation, disrespect, humiliation, or denial of recognition; when it serves to reinforce social hierarchies and power imbalances; or when it causes identifiable harm or offence. These are the exceptions, not the rule.

5 Exploitation

In the discourse on cultural appropriation, it is common to accuse appropriators of ‘exploitation’. However, when used in this context, the term means no more than borrowing, adopting, or using elements of a culture to which one does not belong with the purpose of gaining something from the process.²¹⁵ In this sense, cultural appropriation and cultural exploitation are identical. Apart from its orthodox Marxist meaning, however, the term ‘exploitation’ only has normative relevance (or moral weight) when it refers to specific characteristics of an action. Normatively speaking, to exploit someone is to take unfair advantage of them. It is to use another person’s vulnerability for one’s own benefit in an unjustifiable manner. This unfairness can relate to procedure, substance, or both, and exploitation can be structural when it is brought about by unjust background conditions of

213 Ibid., 25.

214 Jens BALZER: *Ethik der Appropriation*, Berlin: Matthes & Seitz, 2022, 53–54 (transl. T. G.).

215 For a *pars pro toto* see BUCAR: *Stealing my religion. Not just any cultural appropriation*, 207.

the exchange. While exploitation can be harmful when all things are considered, it can also be mutually beneficial, with both parties walking away better off than before, yet the transaction can still be considered unfair.²¹⁶ Nevertheless, given that everyone has the right to select their own cultural references, reinterpret and recreate cultures, use or co-opt elements of the culture of a group to which one does not belong, have access to the cultural resources of others, and “benefit from the cultural heritage and the creation of other individuals and communities,”²¹⁷ the advantages arising from cultural ‘appropriation’ cannot fundamentally be considered unjust. They are rather legitimate. Specific circumstances must be present to justify the verdict of ‘unfair’, and hence the category of exploitation.

6 Coercive exploitation

One set of such circumstances—when the act of appropriation is enabled by coercion or structural violence—can be labelled ‘coercive exploitation’. We can say that A is oppressing B when A deprives B of freedoms or opportunities to which B is entitled. Coercive exploitation occurs when we exploit the vulnerability of another person or group for our own unfair benefit, and this vulnerability has primarily arisen as a result of oppressive measures in which we (or our own group) are involved.²¹⁸ Cultural appropriation is clearly wrong when it is based on and made possible by a “systematic denial of human and constitutional rights and equal economic opportunity.”²¹⁹

A striking example for my last category is what Amiri and Amina Baraka termed the “Great Music Robbery,” the appropriation of Blues and Jazz as “the basic national voice of the African-American people” by members of the mainstream—i.e. white—American culture.²²⁰ White musicians in the United States could steal the songs from Black blues, jazz, and swing artists who were barred from big careers due to violent racial discrimination, enforced with the police officer’s baton. This is a form of what Galtung called structural violence, and it is structural violence that was the problem here, and that led to unfair advantages for white musicians on the ‘white’ market, not the fact that white people wanted to play jazz (‘their’ jazz). Cultural appropriation which is inherently bound up with active discrimination and oppression of minority cultures, is wrong by definition. When it is not,

216 See Alan WERTHEIMER: *Exploitation*, Princeton University Press, 1996, and Matt ZWOLINSKI, Benjamin FERGUSON & Alan WERTHEIMER: “Exploitation,” in: *The Stanford Encyclopedia of Philosophy* (Winter 2022 Edition), ed. by Edward N. Zalta & Uri Nodelman, <https://plato.stanford.edu/archives/win2022/entries/exploitation/>.

217 Committee on Economic, Social and Cultural Rights: General comment No. 21 (2009) on the right of everyone to take part in cultural life, para. 15.

218 See e. g. David ZIMMERMAN: “Coercive wage offers,” *Philosophy and Public Affairs* 10/2 (1981), 121–145.

219 Greg TATE: “Nigs R Us, or How Blackfolk Became Fetish Objects,” in: *Everything But the Burden: What White People Are Taking from Black Culture*, ed. by Greg Tate, New York: Harlem Moon Broadway Books, 2003, 1–14, p. 3.

220 Amiri BARAKA (LeRoi Jones) & Amina BARAKA: *The Music: Reflections on Jazz and Blues*, New York: William Morrow and Company, 1987, 226, 328 (cf. YOUNG: *Cultural Appropriation and the Arts*, 20); Greg TATE (ed.): *Everything But the Burden: What White People Are Taking from Black Culture*.

as is often the case, we face an open question. Without structural racist violence in the US, Black musicians would have been better able to enjoy the fruits of their creativity, such as recognition, fame and money, by popularising their music with non-Black audiences. The problem lay in the different dimensions of the injustice of coercive oppression, not in the fact that cultural forms transcended racial barriers, or that white audiences listened to blues and jazz, or that non-Black musicians created their own (though perhaps not ‘authentic’) interpretations of this music, blending it with their own traditions or creative innovations, and gaining recognition, fame, and money in the process.

7 Illegitimate market success: Cultures and cultural industry

Much of the discourse surrounding cultural appropriation is actually about equal opportunities for people from different cultural backgrounds and fair rules for participating in the markets of the cultural industries. Insofar, the concept of ‘appropriation’ is used to claim exclusive exploitation rights. There is, of course, nothing wrong with these demands, although the accusation of cultural appropriation can, in individual cases, be misused to simply eliminate competitors. There is some *mauvaise foi* in the business.

Naturally, there is a cost associated with all attempts to apply market logic, commodification and the capitalist principle of utilisation to cultural issues.²²¹ If you want to go down this path,²²² the concept of property comes back into the picture. If you view ‘cultural goods’ as ‘cultural products’ and if you focus on the economic value of ‘authentic’ community-generated art, then you might seek intellectual property protection (copyright, patents, and trademarks) for community-based art forms, and the informal networks that produce them. If you treat culture as a commodity, the only remaining question about the cultural goods of a particular community is “who should benefit economically from their distribution,”²²³ and “the goal of challenging cultural appropriation [is] to get in the way of the profits or fame the person or company receives from the cultural elements they took.”²²⁴ However, the price of this strategy may be that, in a system designed for commercial exploitation, cultural identity could become just another character mask,²²⁵ another personification of economic categories. Then, as Susan Scafidi wrote, one of the problems with Pharrell Williams’ headdress on the cover of *Elle* might have been that he did not pay for it.²²⁶

221 As the Committee on Economic, Social and Cultural Rights stresses, “cultural activities, goods and services [...] must not be treated as having solely a commercial value.” Committee on Economic, Social and Cultural Rights: General comment No. 21 (2009) on the right of everyone to take part in cultural life, para. 43.

222 For the idea that the perverse effects of cultural property law could be solved by more capitalism, i.e. by deregulating the international market in cultural property and creating a more efficient market in cultural products (especially antiquities), see Eric A. POSNER: “The International Protection of Cultural Property: Some Skeptical Observations,” *Chicago Journal of International Law* 8 (2007), 213–231.

223 SCAFIDI: *Who Owns Culture?*, 10.

224 DAVIS: *Questioning Cultural Appropriation*, chapter 6.

225 Cf. Karl MARX: *Das Kapital*, vol. I (Karl Marx & Friedrich Engels: *Werke*, vol. 23), Berlin: Dietz, 1962, 100.

226 SCAFIDI: “When Native American Appropriation Is Appropriate”.



Fig. 3: Dana SCHUTZ: *Open Casket* (Oil on canvas, 99 cm × 130 cm, 2016), <https://static01.nyt.com/images/2017/03/22/arts/22WHITNEY/22WHITNEY-superJumbo-v2.jpg>

From a legal point of view, this will hardly work. According to the recognised principles of intellectual property protection, things like general plots, traditional stories, styles, patterns, designs, general knowledge and historical consciousness cannot be owned. Furthermore, only works with an identifiable creator can be owned, and ownership expires after a set period of time. Therefore, Native American headdresses cannot currently be subsumed under the categories of intellectual property protection. However, even disregarding this issue and considering only the possibility of a moral right to be paid, there are three problems with this approach. The problem of who makes the decisions, who is authorised to assert such intellectual property rights in whose name and on whose behalf, and to whose account such patent fees should flow is likely to be virtually insoluble here, too. Above all, though: Adopting the capitalist logic of utilisation means embracing the principle of appropriation, subjecting all cultural assets to the logic of the market and helping to destroy traditional cultures. “The paradox of cultural property is that it kills off a robust notion of culture in order to make culture into a more usable commodity.”²²⁷ Of course, you can’t have it both ways at the same time. The general rule is that what you can sell is not part of your identity.

227 Naomi MEZEY: “The Paradoxes of Cultural Property,” p. 2036.



Fig. 4: The open casket at Emmett Till's funeral in Chicago, September 6, 1955. Photo: Dave Mann, *Chicago Sun-Times*, <https://sceneonradio.org/episode-30-movement-time/>

I will finish with a last example, the heated debate surrounding *Open Casket*, a 2016 painting by Dana Schutz, produced in the context of the Black Lives Matter movement.²²⁸ The subject of the painting is Emmett Till, a Black 14-year-old boy who was lynched by two white men in Mississippi in 1955. The portrait is partly based on a photograph of Till's mutilated body; his mother insisted his casket remain open at his funeral to raise awareness of the graphic realities of racism in the US.

In February 2017, *Open Casket* was selected for inclusion in the 2017 Whitney Biennial. In response, artist and writer Hannah Black posted an open letter to the museum's curators and staff "with the urgent recommendation that the painting be destroyed and not entered into any market or museum [...] because it is not acceptable for a white person to transmute Black suffering into profit." "The subject matter is not Schutz's," she claimed, and "[W]hite creative freedom 'has been founded on the constraint of others'."²²⁹

228 See, for some context, https://en.wikipedia.org/wiki/Open_Casket [5 March 2026].

229 Alex GREENBERGER: "'The Painting Must Go': Hannah Black Pens Open Letter to the Whitney About Controversial Biennial Work," *ARTnews*, 21 March 2017, <https://www.artnews.com/artnews/news/the-painting-must-go-hannah-black-pens-open-letter-to-the-whitney-about-controversial-biennial-work-7992/> [5 March 2026].

Most of the problems associated with cultural appropriation are encapsulated here. Firstly, preventing anti-racist art on racial grounds is hardly a plausible strategy for fighting racism. Secondly, the problem with the idea that certain subject matters are ‘owned’ by certain groups, and that only they are entitled to exploit them artistically and economically, is that “it is not clear that any public audience rightfully belongs to anyone. No [...] one has a right to an audience for a work of art on a particular subject matter.”²³⁰ Thirdly, it would be difficult to accuse Ms Schutz of structural violence and coercive exploitation based on her skin colour in order to substantiate the allegation that her artistic practice is based on the ‘constraint of others’.²³¹

Fourthly, the talk again is about “profit,” about market access. Also, in this regard the argument citing “the constraint of others” is inconsistent, as neither the painter Dana Schutz nor anyone else prevented Black artists from working on similar subjects or even the same subject. Then Ms Black seems to think that it is perfectly acceptable for a Black person “to transmute Black suffering into profit”—a position that does not seem convincing upon closer examination.

More questions remain in the Dana Schutz case. Setting aside the obvious ones, what qualifies Ms Black to make decisions? What justifies the sanction of destroying the painting being demanded? What remains of artistic freedom in a framework of unlimited private censorship? We are once again faced with the question of what cultural property can be, and Homi K. Bhabha’s answer is pertinent: “[Y]ou cannot simply own your own history of being oppressed, or of suffering.”²³² Outside of primitive essentialist group attributions, “the absurdity of thinking that having the right ancestry gives you some privileged relation to things that were done neither by nor to you”²³³ is evident. Once again, we are confronted with the question of what the criteria are for an ‘existentially’ authentic cultural representation of a lynching. Ms Black believes that the artist’s skin colour is the deciding factor, stating that “white shame [...] is not correctly represented as a painting of a dead Black boy by a white artist.”²³⁴ Ms Schutz based her opinion on her status as the mother of a child of Emmett Till’s age, and her need to engage with the history of white violence as a white woman.²³⁵ Perhaps no stories belong to anyone.²³⁶

230 YOUNG: *Cultural Appropriation and the Arts*, 115.

231 For an angry attack on cultural appropriation in a world of power asymmetries and a racially ordered capitalism, see JACKSON: *White Negroes: When Cornrows Were in Vogue ... and Other Thoughts on Cultural Appropriation* (Introduction: “When the powerful appropriate from the oppressed, society’s imbalances are exacerbated and inequalities prolonged,” and: “Ideas and practices and art and appearances accrue value the whiter they become, the whiter they are perceived as being all along.”).

232 KUO, BHABHA, SATTERWHITE, KURIAN, BORDOWITZ, KEE & ASEGA: “Cultural Appropriation: A Roundtable”.

233 MICHAELS: “The Myth of ‘Cultural Appropriation’. Even our own stories don’t belong to us”.

234 GREENBERGER: “‘The Painting Must Go’: Hannah Black Pens Open Letter to the Whitney About Controversial Biennial Work”.

235 The cultural appropriation argument played that way ultimately absolves white people from dealing with the Till murder and other lynching atrocities by silencing them when they attempt to do so.

236 MICHAELS: “The Myth of ‘Cultural Appropriation’. Even our own stories don’t belong to us”.

What remains, however, is the question of aesthetic appropriateness. Anyone who chooses to interpret a significant moment of horror for a particular group of people must do so in a compelling and persuasive way. It is possible that certain artworks may be perceived as harmful by members of a culture due to their aesthetic failure.²³⁷ In this context, aesthetic success, or at least appropriateness, appears to be both an aesthetic and a moral and political requirement. Each case must be critically assessed to determine whether this has been achieved, and this applies to all artists to the same extent. This is where the aesthetic and political critique of cultural appropriation converge. However, the crucial point is that this question can only be addressed through discourse, by means of critique and counter-critique, and not through fantasies of prohibition and destruction. I saw *Open Casket* in Berlin and found it convincing. A German critic spoke of a “startling interpretation.” Competing Black female artists accused Ms Schutz of having an “understanding that is not deep enough and is careless,” which reminds me of Wagner’s claim that the Jewish understanding of German culture can never be deep or serious enough. Other critics bemoaned Schutz’s alleged naivety and the inadequacy of her artistic techniques. Take your pick.

237 YOUNG: *Cultural Appropriation and the Arts*, ix.

IV Conclusion

We can ultimately conclude that the concept – or rather: the empty talk – of ‘cultural appropriation’ does not stand up to normative analysis and is generally unsuitable as a tool for criticism. It is unfounded, incoherent, inconsistent and contradictory, and at its core, it is reactionary. A lack of justification, incoherence, inconsistency and contradiction are things you do not want in a normative argument if you want to be taken seriously.

The cultural appropriation discourse has inherited its political dysfunctionality from identity politics, of which it is a variant. Identity politics is a means of reinforcing group-based distinctions and closing ranks around ever-narrower conceptions of group interests. It traps us into a conception of politics as a struggle between different identities, thereby weakening the possibility of organising across our differences.²³⁸ Identitarian affirmation-based political mobilisation distracts from egalitarian redistribution struggles, risks freezing the very antagonisms it purports to mediate, and does not challenge the status quo of power relations.²³⁹ “The problem is that the whole idea of cultural identity is incoherent, and that the dramas of appropriation it makes possible provide an increasingly economically stratified society with a model of social justice that addresses everything except that economic stratification.”²⁴⁰ In almost all cases, the argument about cultural appropriation is directed at the wrong people and distracts attention not only from the right opponents, but also from the real issues. The main problem with the “identity synthesis,”²⁴¹ however, is that its tribalism undermines the necessarily universalist foundations of universal human rights, equal concern and respect, individual and collective freedom, the protection of minorities, mutual recognition, as well as social equality, integration and forms of solidarity that transcend groups. Genuinely emancipatory politics are intrinsically universalist.²⁴² As Axel Honneth rightly points out, “the moral grammar of the conflict now being conducted around ‘identity-political’ questions in liberal-democratic states”—concerning discrimination based on group or cultural membership, the promotion of group well-being, and the defence of an endangered way of life—“is essentially determined by the recognition principle of legal equality” and the

238 Cf. Olúfẹ́mi O. Táíwò: *Elite Capture: How the Powerful Took Over Identity Politics (And Everything Else)*, Chicago: Haymarket Books, 2022.

239 Cf. Nancy FRASER: “Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation,” in: Nancy Fraser & Axel Honneth: *Redistribution or Recognition? A Political-Philosophical Exchange*, London/New York: Verso, 2003, 7–109.

240 MICHAELS: “The Myth of ‘Cultural Appropriation’. Even our own stories don’t belong to us”.

241 MOUNK: “Should we borrow from other cultures? Of course we should, just as we always have,” 27.

242 Cf. Todd MCGOWAN: *Universality and Identity Politics*, New York: Columbia University Press, 2020; Susan NEIMAN: *Left Is Not Woke*, Cambridge: Polity Press, 2023; MOUNK: *The Identity Trap*; Thomas GUTMANN: “Claiming rights, making history,” in: *Die Gestaltbarkeit der Geschichte*, ed. by Kurt Bayertz & Matthias Hoesch, Hamburg: Meiner, 2019, 223–241.

principle of the equal respect due to each person under the law.²⁴³ Obligations in this realm “arise from legal claims and not from a general assessment of the value of the culture in question.”²⁴⁴ The individualistic and universalistic notion of modern law—based on the idea of the individual as a bearer of equal rights—forms the basis for coexistence and equal rights for different groups and their cultural forms of life.²⁴⁵ This same notion of modern law also guarantees each person’s human right to freely choose their cultural references, identify with multiple cultural groups, access the cultural resources of others, and reinterpret and recreate cultures—in other words, to ‘appropriate’ elements of a group’s culture to which they do not belong. You can’t have one without the other. This is another reason why the discourse of cultural appropriation is normatively contradictory. Even when employed as a form of ‘strategic essentialism’,²⁴⁶ it ultimately causes more harm than good because it undermines the foundations of emancipatory criticism.

Furthermore, we have seen that all the ‘wrong making features’ of genuinely problematic practices, which are labelled with the misleading term ‘cultural appropriation’ (including devaluation, disrespect, humiliation, denied recognition, offence, discrimination, coercion and coercive exploitation), and likewise the means to criticise them, refer to universalist principles that cannot be explained or understood using the tools of identity politics. Not only is the cultural appropriation discourse incoherent, it also cuts off the means for its meaningful reconstruction. It is caught in a loop that resists enlightenment. From a political perspective, the discourse on cultural appropriation, which separates reified ‘cultures’ from one another, serves the divide-and-rule strategies of those in power by undermining solidarity and ends up inadvertently fuelling the ideological agenda of right-wing, identity-based exclusionary strategies and fantasies of purity. Those interested in egalitarian human rights (including cultural rights), mutual respect and recognition, diversity, and the criticism of capitalist exploitation and structural violence would be better off—as would we all—if they avoided the subject of cultural appropriation.

243 HONNETH: “Redistribution as Recognition: A Response to Nancy Fraser,” 169. Cf. HABERMAS: “Struggles for Recognition in the Democratic Constitutional State,” 129 and SMITH: “Multiculturalism and Recognition,” 488–489.

244 HABERMAS: “Struggles for Recognition in the Democratic Constitutional State,” 129.

245 Cf. *ibid.*, 128–130.

246 Cf. MOUNK: *The Identity Trap*, 44–47, 65–69.

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Illustrations

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1. Singer Katy Perry performs with dancers during the 2013 American Music Awards. Photo: Kevin Winter/Today, https://media-cldnry.s-nbcnews.com/image/upload/t_fit-1000w,f_avif,q_auto:eco,dpr_2/streams/2013/November/131125/2D9769810-today-katy-perry-geisha-131125-1.jpg [2 June 2026].
2. *Elle UK*, cover of the July 2014 edition, depicting Pharell Williams wearing a faux Native American headdress, Photo: Doug English, *Elle*.
3. Dana Schutz: *Open Casket* (oil on canvas, 99 cm x 130 cm, 2016), <https://static01.nyt.com/images/2017/03/22/arts/22WHITNEY/22WHITNEY-superJumbo-v2.jpg> [2 June 2026].
4. The open casket at Emmett Till's funeral in Chicago, 6 September 1955. Photo: Dave Mann, *Chicago Sun-Times*, <https://sceneonradio.org/episode-30-movement-time> [2 June 2026].

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‘CULTURAL APPROPRIATION’

The term ‘cultural appropriation’ describes a broad class of circumstances in which someone uses or co-opts elements of the culture of a group they do not belong to in supposedly objectionable ways. This essay provides a philosophical and legal analysis of the underlying normative assumptions of such allegations. It concludes that the idea of ‘cultural appropriation’ is inconsistent, misleading and useless as a tool for criticism. It then outlines which behaviours and institutions targeted by the misleading accusation of ‘cultural appropriation’ are actually problematic and identifies their wrong-making features. Ultimately, the argument is that it is the flawed premises of the discourse on ‘cultural appropriation’ that prevent an adequate analysis of the potentially harmful features of co-opting elements of other people’s cultures, hindering a discussion that can confront them politically in a meaningful and sustainable way.

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