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**BORROWED POWER: ESSAYS ON CULTURAL APPROPRIATION**, Bruce Ziff & Pratima Rao, eds. (New Jersey: Rutgers University Press, 1997).

This book contains a collection of essays on the important topic of cultural appropriation and makes a valuable contribution to the current debate on protection of intellectual and cultural property, especially of indigenous peoples. The essays have been written by high profile scholars of law, anthropology and cultural studies who are renowned for their original and cogitative publications. These international authorities include Bruce Ziff himself who has, together with Pratima Rao, provided an erudite introduction to the book's overriding theme — Cultural Appropriation.

In addition, the selection of various eminent authors, the intelligent division of the book into six parts and the arrangement of individual chapters have been done in a very thoughtful and judicious manner. Each of the essays contains a seminal discussion of a discrete topic and provides abundant references to sources and authorities that should prove handy to those readers who would like to embark on further research and study in this significant field. Quite appropriately, the book concludes with a select, though comprehensive, bibliography prepared by Pratima Rao.

The book is concerned essentially with the appropriation of other cultures, especially indigenous cultures. While appropriation can be regarded as the unauthorized taking of elements of a culture foreign to one's own, the essays explore the vexed questions of the precise meaning of the term "taking," questions regarding values and concerns manifested in the process of appropriation, and questions addressing the need for a suitable legal response to the "crime" of appropriation.

The essays highlight that appropriation is a pervasive phenomenon that covers an array of processes and affects relationships among communities in multifarious ways. The common hypothesis pervading all the essays is that cultural appropriation produces harmful results. The book argues that cultural appropriation erodes or degrades cultural identity and thereby threatens diversity.

One of the most objectionable forms of cultural appropriation is when it results in cultural assimilation, a process whereby minority groups are constrained to adapt or assimilate the cultural forms and practices of the dominant group into their own culture.

As Ziff and Rao have remarked succinctly, "Appropriated cultural groups abound."<sup>1</sup> The eight examples they have given in the introductory chapter represent the usual methods of appropriation. These examples reflect the central assumption that "[t]he styles, forms, images, and topics [are] chosen by the various ... [appropriators] presumably because there is something evocative about them."<sup>2</sup>

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<sup>1</sup> B. Ziff & P. Rao, "Introduction to Cultural Appropriation: A Framework for Analysis" in B. Ziff & P. Rao, eds., *Borrowed Power: Essays on Cultural Appropriation* (New Jersey: Rutgers University Press, 1997) 1 at 3 [hereinafter "Introduction"].

<sup>2</sup> *Ibid.* at 4.

The joint editors have portrayed the book accurately as “a colloquium about the various facets of the appropriation of culture.”<sup>3</sup> The editors should be congratulated for bringing together writings of several eminent scholars from a wide array of disciplines, including anthropology, history, sociology, ethnomusicology, political science, law and cultural studies, and thus stimulating interactive debate among the various faculties. This is perhaps the most attractive feature of the book.

In assembling this collection the editors were governed by two seemingly conflicting aims: to locate common themes, and at the same time to explore diversity. This is an alluring combination that has enabled the editors to reflect the ways in which differently situated authors tackle the central questions concerning appropriation. The resultant array of styles is diversified further by the editors’ inclusion of contributions written both from an objective, exterior point of view (*e.g.*, Kwame Dawes’ “Re-appropriating Cultural Appropriation”),<sup>4</sup> and an up-close personal account of subjective experience within the appropriation controversy (*e.g.*, Lenore Keeshig-Tobias’ “Stop Stealing Native Stories”).<sup>5</sup> This makes for very interesting reading.

Furthermore, whilst citing the vast array of cultural appropriation practices, the editors have focused on “those instances that have political significance in contemporary society.”<sup>6</sup> Issues that abound in the contemporary political landscape are concerned primarily with the struggle of minority groups to claim and protect rights to a cultural heritage.

A majority of the essays deal with issues that concern indigenous peoples. Others concentrate on Black American culture and its interface with dominant white society. Some of the contributors reflect concerns about cultural degradation. They make strong objection to the theft of their cultural soul, misrepresentation of their culture, silencing of their voices, and assumption of the role as their spokesperson. They argue that because of these malpractices, important cultural artefacts are in danger of destruction and extinction.

Some of the essays are based on aesthetics and stewardship. These claim that cultural treasures are sometimes diluted, altered, ruined and commodified. This results in sacred practices being trivialized, and their sacredness ignored or profaned.

Other essays adopt a stance based on material deprivation. These essays admonish the free riders who expropriate the profits of someone else’s intellectual property without giving the author due recognition and compensation. Allied to this are claims of sovereignty in which these assertions are expounded. The “authentic” owners conceive of the cultural goods as theirs and so have the right to say “No.” Through appropriation, these sovereign claims are ignored.

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<sup>3</sup> *Ibid.* at 20.

<sup>4</sup> *Ibid.*, 109.

<sup>5</sup> *Ibid.*, 71.

<sup>6</sup> *Ibid.* at 21.

The common denominator of the appropriation debate is the examination of the dynamics of domination and subordination. I believe that this collection of a fine body of literature from diverse fields demonstrates clearly the editors' success in bringing to limelight the complex issues pertaining to cultural appropriation not only for Canadian readership but for the whole world. Especially pertinent is the issue, canvassed by several essays, of whether the law (especially the law of property) has a role to play in counteracting appropriative practices. On the whole, the authors conclude that the present US and Canadian intellectual property regimes are hopelessly inadequate to deal with the issues raised, and are riddled with hurdles that relate to the claiming of protection for indigenous knowledge, especially that in the ethnobiological sphere. This is unfortunate as effectively framed property rights have the potential both to countervail oppression that results from cultural appropriation, and to serve as a source of empowerment for minority cultures.

The book is divided into six parts that are arranged and classified under the following headings: appropriation of music and musical forms; art and narrative; colonial and post colonial discourse; popular culture; science; and tangible cultural property. What follows is a short comment on each of these parts and the individual essays contained therein.

Part 1 examines the appropriation of musical forms and works. Perry A. Hall's essay on "African-American Music: Dynamics of Appropriation and Innovation" discusses the appropriation of African-American music by the dominant white culture.<sup>7</sup> He focuses his analysis substantially on the so-called modes of appropriation and their consequences. The author sums up his sentiments in the following words: "[I]n the history of Black music, ... a complex 'love-hate' relationship connects mainstream society and African-American culture — in which white America seems to love the melody and rhythm of Black folks' souls while rejecting their despised Black faces."<sup>8</sup> Ironically, although the dominant white culture has appropriated and absorbed the aesthetic dimensions of Black culture, the author surmises that that has "not lead to comparable embrace of Black culture at the human level."<sup>9</sup>

Hall points out that white America has been attracted consistently by Black musical sensibilities. But this kind of appropriation has harmed Black music gravely. Thus, the Black music has in due time lost much of the emotional directness and rhythmic vitality that had made it distinctive and provoked attraction in the first place. Furthermore, the absence of any compensation to the "owners" of black music is unjust. Hall refers to the odious result of this form of appropriation: "reaping value and economic profit from aesthetic innovations emerging from the tradition of cultural sensibility among ordinary Blacks, who remain mostly as disadvantaged and disenfranchised as ever."<sup>10</sup> However, the author concludes his well-written essay on a positive note: "[I]n spite of the

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<sup>7</sup> *Ibid.*, 31.

<sup>8</sup> *Ibid.* at 31.

<sup>9</sup> *Ibid.* at 32.

<sup>10</sup> *Ibid.* at 39.

continual siphoning of the creative impulses of African-American culture, its dynamism somehow allows it to go on re-creating, reshaping, and reaffirming Black humanity."<sup>11</sup>

The next essay is written by Anthony Seeger who is renowned for his scholarly contributions in the field of anthropology and ethnomusicology. Writing on "Ethnomusicology and Music Law," he pursues Hall's concerns over the need for a culturally-sensitive treatment of musical works, although Seeger addresses the issue from a different perspective.<sup>12</sup> After commenting that the level of awareness about music ownership was dismal, Seeger identifies the potential for conflict arising over such practices as collecting field recordings of indigenous music, reproducing ethnographic recordings on commercial record labels, and reproducing these recordings in supplements to textbooks. The author's discussion of the contentious ownership issues that he encountered whilst trying to reconcile the various customary forms of ownership with the US copyright regime is both engaging and instructive.

Seeger's pragmatic approach and in-depth analysis of the relevant issues are exemplified well by the following observations, which he goes on to develop in his lucid style: "European law is based on the individual";<sup>13</sup> "The basic issue in commercial recordings is trust";<sup>14</sup> "Some of the most in-depth research on western song seems to have been done under the sting of a lawsuit"<sup>15</sup>; "An important form of exploitation is music copyright";<sup>16</sup> "United States law favours song publishers over artists";<sup>17</sup> "In fact, the copyright law is far from equitable, and the U.S. is less generous than most to artists";<sup>18</sup> and "[T]his whole area of musical practice has been virtually ignored in ethnomusicological research and publications."<sup>19</sup> The author demonstrates that a deeper understanding is needed urgently of the various culturally specific regimes that protect musical forms of property. Furthermore, Seeger has analyzed ably the vexed issue of compatibility of the copyright law for protecting ethnomusicological works.<sup>20</sup>

Part 2 deals with appropriation in art and narrative particularly in the context of the Canadian controversy about voice appropriation. In her short, though lucid, essay on "Stop Stealing Native Stories," Lenore Keeshig-Tobias gives a graphic account of cultural appropriation of Native stories by non-Native writers.<sup>21</sup> She reminds us about the great significance of stories, and strongly condemns the practice of "cultural theft" — the practice of "stealing," commercialising and then profiting from the retelling of

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<sup>11</sup> *Ibid.* at 49.

<sup>12</sup> *Ibid.*, 52.

<sup>13</sup> *Ibid.* at 55.

<sup>14</sup> *Ibid.* at 59.

<sup>15</sup> *Ibid.* at 61.

<sup>16</sup> *Ibid.* at 62.

<sup>17</sup> *Ibid.* at 63.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.* at 65.

<sup>20</sup> *Ibid.* at 60-63.

<sup>21</sup> *Ibid.*, 71.

Native stories.<sup>22</sup> The author is concerned incessantly that “the Canadian cultural industry is stealing — unconsciously, perhaps, but with the same devastating results — native stories as surely as the missionaries stole our religion and the politicians stole our land and the residential schools stole our language.”<sup>23</sup>

Rosemary J. Coombe’s essay on “The Properties of Culture and the Possession of Identity: Postcolonial Struggle and the Legal Imagination” wrestles with the strains of discourse that have emerged in Canada.<sup>24</sup> Arguing from the conflicting perspective of both lawyer and anthropologist, this prolific author examines the two dominant discourses in the debate, which she calls Romanticism and Orientalism. The author disapproves of reliance on post-colonial approaches to confront the issues of cultural appropriation. The main thesis propounded in this powerfully argued essay may best be summed up in the author’s own words: “Ultimately the questions of ‘whose voice it is,’ who speaks on behalf of whom, and whether one can ‘steal the culture of another’ are not *legal* questions to be addressed in terms of asserting rights, but *ethical* ones to be addressed in terms of moral and political commitments.”<sup>25</sup>

M. Nourbese Philip’s “The Disappearing Debate; or, How the Discussion of Racism Has Been Taken Over by the Censorship Issue” analyses the tensions that emerge when the critique over voice appropriation is met with claims of censorship.<sup>26</sup> The author argues that this shift is common in Western societies where censorship is the vehicle employed to compare the relative freedoms of societies and where the discourse of censorship has a tendency to become privileged over that of racism. As the author eloquently puts it: “The quantum leap from racism to censorship is neither random nor unexpected, since the issue of censorship is central to the dominant cultures of liberal democracies like Canada.”<sup>27</sup>

The next essay, entitled “Re-appropriating Cultural Appropriation,” is contributed by Kwame Dawes.<sup>28</sup> The author investigates the provision of funding for minority artists as one response to problems of appropriation. Dawes also comments on the political dimension of this response. He reiterates that the arts and cultural world is linked inextricably to funding and that funding is a deeply political issue that requires highly politicised artists to challenge the philosophical foundation upon which funding decisions are made.

Another interesting aspect of Dawes’ essay is its reference to the absence of an even playing field in the debate on cultural appropriation. The author postulates:

Our society is marred by significant inequities which have, for years, led to the exclusion of “minorities” and communities not regarded as belonging to the “mainstream” of the society from

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<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.* at 72.

<sup>24</sup> *Ibid.*, 74.

<sup>25</sup> *Ibid.* at 93 [emphasis in original].

<sup>26</sup> *Ibid.*, 97.

<sup>27</sup> *Ibid.* at 98.

<sup>28</sup> *Ibid.*, 109.

telling their own stories. Riding on the back of a carefully designed and efficiently implemented system of the cultural oppression of colonialism and imperialism, much of Canada's cultural behaviour merely reflects a privileging of white Eurocentric values.<sup>29</sup>

Dawes argues compellingly for funding agencies to restructure themselves to enable non-White artists to become part of the artistic mainstream — a redefined mainstream not based entirely on White values and Western culture.

Joane Cardinal-Schubert's piece, entitled "In the Red," draws attention to the unprotected nature of Native and tribal copyright in the international arena.<sup>30</sup> The essay contains a lucid account of appropriation, imitation and commercialisation of Native art and culture by the dominant white society. The author discusses how this exploitative practice often incorporates a romanticised and distorted image of "the Indian." Another notable feature of this essay is the author's recount of policies of apartheid, e.g., Native languages were not allowed in schools, children were beaten and punished for speaking "Indian," loss of status if a Native woman married a white man but not vice-versa.<sup>31</sup> The author makes a strong plea for stopping art racism and the consequent plagiarism of the artists' intellectual property.<sup>32</sup> She advocates revision of intellectual property laws and a return to strong personal ethics on behalf of artists to achieve this aim.

Part 3 of the book contains a captivating account of the appropriation of culture in colonial and post colonial discourse. In his remarkably intricate and scholarly essay on "Translating and Resisting Empire: Cultural Appropriation and Postcolonial Studies" Jonathan Hart examines the exchange of cultures in a colonial and post colonial context.<sup>33</sup> According to the author, the purpose of his article is "to set out what cultural appropriation is and to articulate its role in imperialism, colonialism, and postcolonialism."<sup>34</sup> He also probes "how the history of colonialism bears significantly on the making of someone else's culture into property in a world that calls itself postcolonial and how that practice is resisted."<sup>35</sup> According to Hart, the transition from colonial to postcolonial era explains the complexities of identity, resistance, hybridity, and mediation in the cultural exchange and representations of the Europeans as well as in the other cultures they came across during empire.

J. Jorge Klor de Alva's essay, entitled "Nahua Colonial Discourse and the Appropriation of the (European) Other," delves into issues of cultural appropriation from the vantage point of the colonised and their strategies of resistance.<sup>36</sup> The author discusses the use of colonial discourse by the Nahuas of New Spain as a weapon for resisting Spanish domination and as a tool for adapting to the shifting social, cultural, and political conditions brought on by the colonisers. Ultimately the author reveals how

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<sup>29</sup> *Ibid.* at 112.

<sup>30</sup> *Ibid.*, 122.

<sup>31</sup> *Ibid.* at 123.

<sup>32</sup> *Ibid.* at 132.

<sup>33</sup> *Ibid.*, 137.

<sup>34</sup> *Ibid.* at 137.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*, 169.

widespread disease coupled with colonial practices of exclusion triumphed over a “strategy of incorporation.”<sup>37</sup>

Part 4 probes into appropriation in popular culture. In her illuminating and very well structured essay on “Memory and Misrepresentation: Representing Crazy Horse in Tribal Court,” Nell Jessup Newton comments on the commercial appropriation of Indian names, images, stories, and religious practices, and patterns.<sup>38</sup> Her detailed account of a lawsuit brought by Seth Big Crow, descendant of the Lakota chief Tasunke Witko (Crazy Horse), against the distributors of a product called Crazy Horse Malt Liquor makes it very interesting reading. Also, this erudite article contains an excellent account of the history of tribal courts, and notes their worth in providing a forum for actors familiar with a particular culture to present the facts and argue for a legal theory that is “culturally appropriate.”<sup>39</sup>

Deborah Root’s essay on “‘White Indians’: Appropriation and the Politics of Display” reflects on a white “hippie” of the counterculture generation (dubbed as a native “wannabe”) dressed in the clothing of assorted ethnic (aboriginal, Afghani, and indigenous Latin American) groups.<sup>40</sup> The author is opposed to “commodification” of the Native culture. She articulates her sentiment in the following words: “Appropriation always goes hand in hand with colonialism and the display of authority. Wanna-bes have rendered the old colonial ‘We want it, so we’ll take it’ mentality into something rather more complex in that appropriation can seem to be a mark of ‘sensitivity’ to another culture.”<sup>41</sup> Root believes that such manifestations of appropriation have developed and become normalized through the imperialist practices of Western culture, such as the depiction of Natives in popular culture as passive but heroic victims standing in the way of “progress.” The author identifies a need to transform our view of Western history and tradition, and to find a way to untangle it from the racist versions to which we have been subjected in the past — only through the employment of solidarity politics can we successfully achieve this.

Part 5 takes us into the realm of the appropriation of scientific knowledge and other forms of intellectual property. James D. Nason’s erudite piece on “Native American Intellectual Property Rights: Issues in the Control of Esoteric Knowledge” deals with the vexed issue of control of Native American intellectual property.<sup>42</sup> The article contains an authoritative discussion of the US legislative enactment entitled the *Native American Graves Protection and Repatriation Act* 1990. There is also a thoughtful coverage of the issue relating to the patenting of life forms. “This is of interest to us because so much of what is under scrutiny for patents stems from traditional knowledge of plant uses, especially for medicinal purposes.”<sup>43</sup> In sum, in this essay Nason

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<sup>37</sup> *Ibid.* at 189.

<sup>38</sup> *Ibid.*, 195.

<sup>39</sup> *Ibid.* at 215.

<sup>40</sup> *Ibid.*, 225.

<sup>41</sup> *Ibid.* at 231.

<sup>42</sup> *Ibid.*, 237.

<sup>43</sup> *Ibid.* at 247.

skilfully recapitulates the new challenges posed by the appropriation of esoteric knowledge, e.g., sacred practices and scientific indigenous knowledge.

The next essay is a well-researched piece by Naomi Roht-Arriaza. The title of the chapter is "Of Seeds and Shamans: The Appropriation of the Scientific and Technical Knowledge of Indigenous and Local Communities."<sup>44</sup> The author's impressive and detailed discussion of intellectual property issues that surround the appropriation of scientific and technical knowledge of indigenous communities addresses challenges raised by some of the other authors, especially Nason. She describes the many ways in which corporations engaged in the area of biotechnology and genetic engineering have made billions of dollars by appropriating the knowledge of indigenous communities without providing any compensation. In response, she proposes numerous mechanisms that could potentially reverse the destructive appropriation of indigenous and local communities' scientific knowledge.

The author's concluding statement deserves close scrutiny:

An end to appropriation requires recognition of the role of indigenous and traditional or local communities as stewards of scientific and ecological knowledge and resources, as innovators, and as practitioners of sustainable production and life systems. For these communities, the right to control their scientific knowledge and its associated resources is inseparable from rights to the communities' communal heritage — including its tangible and intangible elements.<sup>45</sup>

Part 6 covers issues concerning appropriation and tangible cultural property. In his second contribution, entitled "Beyond Repatriation: Cultural Policy and Practice for the Twenty-first Century," James D. Nason contends that American repatriation legislation represents only the first step in dealing with a number of related concerns confronting museums and legislative bodies.<sup>46</sup> The central issue is about control of material culture. With these thoughts in his mind, Nason provides an enlightening analysis of issues concerning Native American cultural property, past, present, and future. The author maps out ingeniously the developments that triggered the enactment of the *Native American Graves Protection and Repatriation Act* 1990 and the implications of the Act.

The final essay contains an important case study. In "A Coming Together: The Norton Allen Collection, the Tohono O'odham Nation, and Arizona State Museum," Lynn S. Teague, Joseph T. Joaquin, and Hartman H. Lomawaima chronicle an account of the repatriation of cultural property once held in the private collection of Norton Allen.<sup>47</sup> Their study provides some useful insights into the process that will ultimately result in the return of the collection to the Tohono O'odham Nation for exhibits and educational programs. The narrative describes how the donation of the Allen Collection led the way for an agreement between the O'odham Nation and the Museum. The

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<sup>44</sup> *Ibid.*, 255.

<sup>45</sup> *Ibid.* at 277.

<sup>46</sup> *Ibid.*, 291.

<sup>47</sup> *Ibid.*, 313.

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agreement represents significant progress in discussions concerning the holding of cultural materials, and may well provide a model for other collaborative ventures.

All in all, this superb collection of essays scorns cultural appropriation. It also suggests ways to halt the malpractice of cultural appropriation. The book's value lies in its potential to serve as a catalyst to draw attention to the different modes of appropriation and the immeasurable hurt and economic loss such appropriations can cause to the concerned communities.

In collecting these stimulating essays on cultural appropriation, the joint editors had set out "to provide a forum for, and orchestrate a conversation about, the nature of a very complex subject."<sup>48</sup> The present reviewer is pleased to affirm unequivocally that Bruce Ziff and Pratima Rao have succeeded in their mission! The book is an excellent example of total professionalism by all concerned — the contributors, the publishers and above all, the editors. The book is essential reading for students, researchers and academics in a wide array of disciplines, including anthropology, history (including art history), sociology, ethnomusicology, postmodern literary theory, political science, law, and cultural studies. In addition, because of the illuminating nature of the contents, the book should be of great interest to politicians, legislators and judges.

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<sup>48</sup> "Introduction," *supra* note 1 at 24.