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DEFINING A RIGHT TO CULTURE, AND SOME ALTERNATIVES

ROBERT WINTHROP



ABSTRACT

The Universal Declaration of Human Rights asserts that 'Everyone has the right freely to participate in the cultural life of the community'. As this suggests, the notion of cultural rights is both intuitively appealing and analytically vague. Assertions of cultural rights have gained prominence in both national and international policy contexts. This article considers some of the conceptual challenges, including a potential bias towards reification and traditionalism and the inherently contestable character of claims based on cultural rights. It also suggests a threshold test for identifying violations of cultural rights, and presents some alternatives to a rights-based framework for advancing cultural issues within public policy.

Key Words ◇ cultural rights ◇ culture theory ◇ human rights ◇ Native North America ◇ public policy

Rights to Culture?

As the anthropologist Christoph Brumann wrote recently, 'it appears that people . . . *want* culture, and they often want it in precisely the bounded, reified, essentialized, and timeless fashion that most of us now reject' (Brumann, 1999: S11).¹ Equally we may say that people want cultural rights, or at least an increasing number of challenges to existing policies and institutions phrased in terms of an assertion of cultural rights. Thus the Makah tribe of Washington State asserts on cultural grounds the right to hunt whales, despite an international ban on commercial whaling (Aron et al., 1999; Johnson, 1999). So as to preserve their values and way of life the Amish claim the right to exempt children from formal schooling above the eighth grade (Kymlicka, 1995: 162).² In criminal proceedings in many western countries attorneys debate what role—if any—cultural understandings should play in determining the culpability and punishment of immigrant defendants (Winkelman, 1996). Issues of cultural rights are assuming a prominent place in debates over international trade policy, as seen in demands by Canada and France to protect domestic 'cultural goods'

such as magazines and films from competition by more powerful American media (Anon., 1998).

As international human rights policies develop greater reach and effectiveness, questions of cultural rights receive increasing attention. The Covenant on Economic, Social, and Cultural Rights (Article 15) recognizes 'the right of everyone to take part in cultural life' (Steiner and Alston, 1996: 1179). The counterpart Covenant on Civil and Political Rights (Article 27) declares,

In those states where ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. (Steiner and Alston, 1996: 1168)

As these examples may suggest, the idea of cultural rights is both intuitively appealing and analytically vague.

This article has three aims. First, it describes some of the conceptual problems involved in the assertion of cultural rights. Second, it suggests a threshold test for identifying violations of cultural rights. Third, it presents some alternatives to a rights-based framework for advancing cultural issues within public policy.

Three Dimensions of Cultural Rights

Claims of cultural rights imply a three-sided relationship that can be represented conceptually as a relationship between a group (the 'rights-holders') and a system of cultural knowledge, mediated by particular acts and avoidances (see Figure 1). Certain persons, the presumed 'rights-holders', claim the right to certain acts or the exemption from certain obligations (avoidances), based on a distinctive status: being Hmong, Makah, Sikh. Such acts or exemptions are normally not available to all members of a society, hence the special pleading involved in the assertion of cultural rights. But unpacked, these claims really have a double aspect, one cultural, the other social. A particular act or avoidance has *authenticity* by deriving from some more general system of cultural knowledge, as the gathering of edible roots has a place in a larger repertoire of native food practices of North America's Columbia Plateau. Equally, a particular group of individuals claims *legitimacy* relative to such acts or avoidances. Not just anyone can convincingly assert a right to hunt whales or an exemption from mandatory schooling, but those who can demonstrate an appropriate status—whether reckoned through descent, language, residence, religion, or other principle.

Within anthropology, at least, the conceptual problems associated with the idea of cultural rights center on the notion of culture itself. Is it

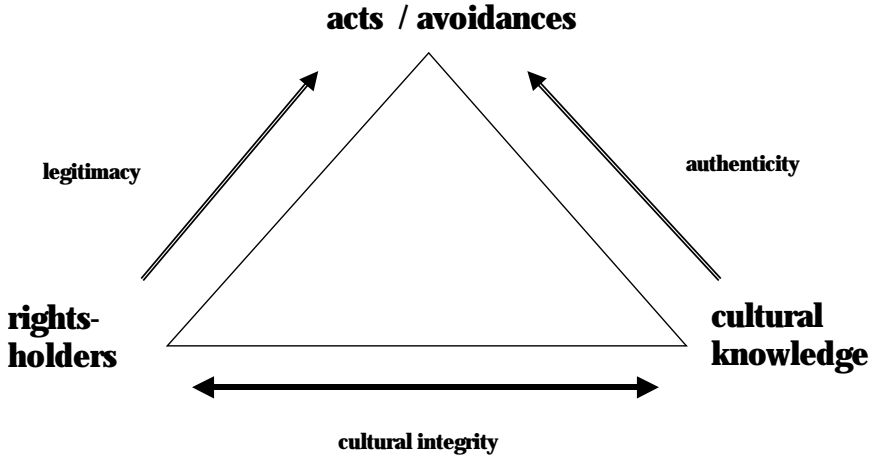


Figure 1. *The Triangle of Cultural Rights.*

appropriate or useful to speak of cultures as though they were distinct entities, like planets or grapefruits? Terminologically we fumble over this problem by debating the appropriateness of *culture/cultures* (singular or plural), or *culture/cultural* (noun or adjective).

Within political science and philosophy, on the other hand, debate has centered on the other half of the relationship. *Who* possess cultural rights: individuals or groups? For most proponents of human rights the suggestion that groups have rights raises serious problems (Hartney, 1995; Kymlicka, 1995; Van Dyke, 1995). Understandably enough: from the perspective of philosophical liberalism, an outlook dominant in both law and ethics, rights accrue to individuals. 'The basic principles of liberalism . . . are principles of individual freedom. Liberals can only endorse minority rights in so far as they are consistent with respect for the freedom or autonomy of individuals' (Kymlicka, 1995: 75). But from an anthropological perspective, it is difficult to approach the analysis of culture without associating it with groups. At least in an anthropological context *cultures* and *groups* (such as communities, tribes, or nations) are mutually defining, interdependent concepts.

Unfortunately, both terms in this relationship are ambiguous and contestable. For if cultures are systems of meaning, these are fuzzy rather than clearly bounded systems: evolving, transacted, and largely tacit. The ambitions of ethnographers notwithstanding, 'cultures' are not the type of knowledge system that can be exhaustively codified; they are not comparable in clarity to more specialized bodies of knowledge such as the rules of criminal procedure or contract bridge. Similarly, while cultures only exist in and through social life, cultural systems lack a definitive constituency, unlike the members of a descent group or the owners of real property who—in

principle—can be identified unambiguously. All of these factors make the effort to view cultural practices through the lens of rights claims problematic.

Consider some of the controversies surrounding the prohibitions in Judaism against working on the Sabbath. In the early 1990s an uproar ensued when a group of orthodox Jews in Hampstead Garden Suburb north of London petitioned planning authorities to permit the construction of a 6 square mile *eruv*, a symbolic enclosure made of poles and wire. In Orthodox eyes the *eruv* constitutes an artificial extension of the home, permitting actions such as carrying a package or pushing a baby buggy otherwise forbidden on the Sabbath. But others—including many non-orthodox Jews—opposed the project as an unnecessary symbol of ethnic division, a foreshadowing of 'Bosnian-style ethnic disintegration' (Trillin, 1994). Similarly, in Jerusalem orthodox and secular Jews have battled for years over whether or not streets running through orthodox neighborhoods should be closed on the Sabbath (Greenberg, 1996). In terms of the distinction raised between *authenticity* and *legitimacy*, these debates center on issues of legitimacy: who can validly speak for Jews? In both cases, the cultural implications of Jewish identity were contested, not merely by outsiders but by other Jews.

Contrast this with a case centering on issues of cultural authenticity, stemming from the proposed construction of a bridge to Hindmarsh Island near Adelaide, Australia (Bell, 1998). Developers had long dreamed of transforming the island by constructing resort facilities as well as new housing, which required the bridge to be easily accessible. Plans to build the bridge came to an abrupt halt when a group of Ngarrindjeri aboriginal women claimed that there was secret 'women's business' affected by the project. A 1994 report commissioned by the Commonwealth Minister for Aboriginal Affairs concluded that

... the bridge presents a threat to the area in the form of a permanent prominent and physical link above the water between two parts of the territory which would, in accordance with Ngarrindjeri tradition, render the cosmos, and the human beings within it, 'sterile' and unable to reproduce. (C. Saunders, in Tonkinson, 1997: 4)

In a remarkable show of sensitivity the Minister for Aboriginal Affairs imposed a 25-year ban on construction of the bridge (Tonkinson, 1997: 4; Weiner, 1999:196–8).

In 1995, however, seven senior Ngarrindjeri women came forward to dispute the claims of secret women's business. Bertha Gollan, an elderly Ngarrindjeri woman, described the claims as 'rubbish'. She stated: 'I've known most of the girls who are going on about the secret "women's business" since they were babes and I cannot understand what they are raving on about. . . . It has gone beyond a joke and it is time it was stopped' (Manners, 1995). These and similar comments challenged the authenticity of Ngarrindjeri claims regarding the island, turning the bridge proposal into an Australian cause célèbre. (The claims were later vindicated.)

The knowledge system on which cultural rights claims are based is largely tacit. It cannot be fully verbalized—a point that leads to obvious difficulties when such claims are advanced within the ostensibly rational enterprises of law or public policy. Furthermore, even if a cultural system could be fully articulated, there is no canonical version of the facts; there are merely different individuals who participate in and through such a system, enacting, interpreting, and thus transmitting its understandings. Approaching cultures as transacted and thus evolving systems of knowledge has the advantage of leading us from the temptations of essentialism and traditionalism: the spurious notion of timeless cultural performance, be this by Amish, Hasidic Jews, or Australian aborigines. To put the matter in different terms, cultural legitimacy and authenticity are themselves constructs—or at least, inherently debatable (Haley and Wilcoxon, 1997; Winthrop, 1998a). Our challenge is to define an appropriate domain for rights based in culture while acknowledging the factual and ethical ambiguities inherent in such controversies.

The problems associated with bounding and describing cultures suggest that difficulties are unavoidable in translating issues of culture into the essentially legal framework of rights. As Robert Bellah and his colleagues wrote in *The Good Society*:

The most troubling problem with 'rights' is that everyone can be said to have them, and when rights conflict, the rights language itself offers no way to evaluate competing claims. As rights crowd each other out, the rights language seems inadequate for dealing with major social dilemmas. (Bellah et al., 1991: 128)

For this reason I suggest that we view claims of cultural rights as one of several strategies for conserving the integrity of cultural systems. In the balance of this article I suggest how we might decide when a rights framework is the most appropriate tool for the job, and what some alternative approaches might be.

Six Cases

As a thought experiment consider the following cultural controversies, all drawn from the history of Indian—white relations in the United States (see Figure 2).

Commercial use of names and designs

Native American cultures exert a fascination for non-Indians in North America and Europe alike. Seen through the green-tinted lenses of the environmental movement, indigenous cultures became the embodiment of traditional grace and wisdom. 'From a distance,' Stewart Brand wrote of the

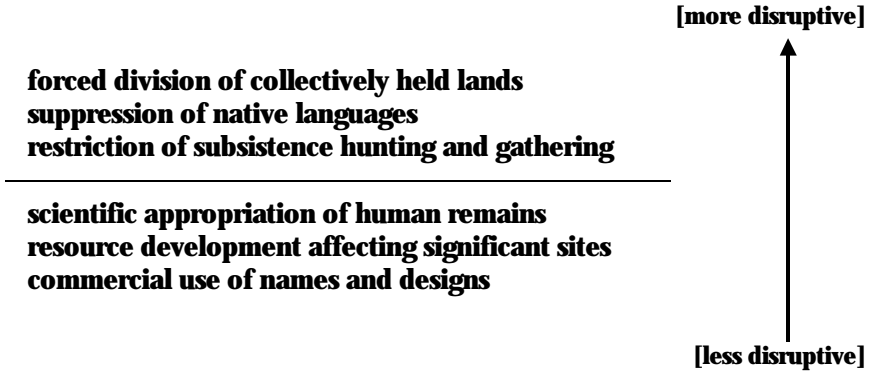


Figure 2. Impacts to Cultural Integrity.

cultural politics of the 1960s, 'Indians looked perfect: ecologically aware, spiritual, tribal, anarchistic, drug-using, exotic, native, and wronged, the lone genuine holdouts against American conformity and success' (Brand, 1988: 570). But imitation of things Indian has not been limited to the counter-culture. In the Indian hobbyist movement otherwise sober, middle class Europeans and Americans come together at teepee camps and pow wows in 'traditional' dress (usually modeled on Plains garments) to dance, sing, and in various ways celebrate their enthusiasm for all things Indian (Taylor, 1988).

In the United States in particular tribal references, names, and designs are constantly appropriated by the larger society in ways that infuriate many Indians. Often the intent is purely commercial: the Washington Redskins, the Cleveland Indians, Crazy Horse Malt Liquor.³ Native designs, often copied from rock art sites, are a frequent object of cultural annexation. In Washington State the haunting, stylized face of Tsagiglalal—'She Who Watches'—looks down from cliffs high above the Columbia River (Keyser, 1992: 101–2). The Tsagiglalal image has been copied innumerable times by non-Indians for both commercial and non-commercial purposes. But as Clifford Washines, a cultural specialist with the Yakama Indian Nation, says of such rock art images: 'This is our culture. . . . We don't like to see it commercialized; put on T-shirts, calendars, coffee mugs. It has traditional value, not monetary value' (Johnston, 1999; see also Rose, 1992).

Resource development affecting significant sites

Place has diminishing importance in post-industrial societies, whose resources are procured and production organized over a global domain. American Indian cultures, in contrast, are largely expressed through place-based practices. In the Pacific Northwest many tribal communities continue

to obtain salmon at traditional fishing stations, medicines in familiar upland meadows, and roots at well known gathering areas, all serving to reproduce traditional associations between communities, places, and culturally significant practices (Winthrop, 1999).

Particularly in the American west, the market economy's voracious demand for resources often collides head-on with the native desire to keep culturally significant landscapes undisturbed. In the 1980s American Indian tribes filed numerous challenges to development decisions on public lands, arguing that, by damaging the character of such sites, federal actions violated the plaintiffs' rights of religious free expression. These First Amendment cases included a Navajo challenge to operation of the Glen Canyon Dam that had flooded sacred sites in Utah's Rainbow Bridge National Monument (*Badoni v. Higginson*); Cherokee opposition to federal construction of the Tellico Dam that would flood Indian burial sites (*Sequoyah v. Tennessee Valley Authority*); Hopi and Navajo efforts to block expansion of a ski facility in the Arizona Snow Bowl that would impinge on high elevation sacred sites (*Wilson v. Block*); and a suit by Lakota and Southern Cheyenne plaintiffs opposed to operations of Bear Butte State Park in South Dakota affecting ceremonial areas (*Crow v. Gullett*). None were successful (Clinton et al., 1991: 67-8).⁴ In 1988 the Supreme Court ruled on a suit brought by Karuk, Yurok, and Tolowa religious practitioners in northwestern California to halt construction of a logging road that would affect high altitude areas used for vision quest rituals (*Lyng v. Northwest Indian Cemetery Protective Association*).⁵ The high court upheld the actions of the US Forest Service, in a ruling that effectively closed the door to tribal efforts to halt projects on federal lands based on claimed rights of religious free expression (Clinton et al., 1991: 68-79; Moore, 1991; Page, 1990).

Scientific appropriation of human remains

Death rituals are a cultural universal. No society takes a casual approach to the fact of death or the remains of the deceased. In the case of North American Indian societies such reverence comes into direct conflict with the demands of scientific research. For two centuries amateur and (later) professional anthropologists have interpreted the lives and cultures of native North America for Euro-American society. Because physical anthropology and archaeology view native burials as a rich trove of potential information on the biology and prehistory of past societies (Lambert, 1996), American museums and government agencies accumulated a startlingly large collection of native human remains. By one estimate the Smithsonian holds some 18,500 Native American skeletons; the Tennessee Valley Authority is said to possess 13,500 remains, the University of California another 11,000 (Thornton, 1996: 542; Yellow Bird and Milun, 1994: 10). Such actions deeply offend traditional American Indians. As Wanapum elder Robert

Tomanawash said of archaeological claims to one ancient skeleton, 'He was committed to the dirt and that is where he should remain until the judgment day' (Lee, 2000).

Amassing tens if not hundreds of thousands of human remains in the face of intense opposition by Indian communities reflects the historical powerlessness of American tribes. But it also demonstrates that Indians and 'anglos' hold fundamentally different ideas about place, community, and time. White Americans can feel intensely protective about the remains of close relatives: witness the frantic insistence of relatives of American servicemen missing in action in Vietnam that the US government recover their remains (Yellow Bird and Milun, 1994: 17). Unlike the view of white Americans, for traditional Native Americans this sense of responsibility and affiliation with the dead does not fade beyond one or two generations (Winthrop, 1994). In 1990, responding to strong Indian resentment at the excavation and retention of Native American skeletons, Congress passed the Native American Graves Protection and Repatriation Act (NAGPRA).⁶ This mandated that federal agencies and federally funded museums inventory and offer to repatriate to descendants or culturally affiliated Indian tribes all native human remains and associated funerary objects (Goldstein, 1996; Rose et al., 1996; Thornton, 1996). For relatively recent burials the NAGPRA repatriation process has functioned reasonably well. But in the case of far older material—such as the 9000 year old Kennewick Man from Washington State (Chatters, 2000)—where it is essentially impossible to demonstrate affiliation with any modern Indian group, the contending interests of Indian spirituality and archaeological science have yet to find a point of balance (Echo-Hawk and Echo-Hawk, 1991; Zimmerman, 1997).

Restriction of subsistence hunting and gathering

For native peoples the curtailment of traditional subsistence practices has been one of the most serious consequences of the European conquest of North America (Institute for Natural Progress, 1992). In every society the actions of daily life are critical to learning and transmitting cultural knowledge. In the case of native North America hunting, fishing, and gathering practices not only provided for the material needs of communities, but maintained social groups and networks through acts of exchange. Equally, subsistence practices preserved critical bodies of knowledge—encompassing not only the characteristics of plant and animal species, but their mythic associations, spiritual significance, and the attributes of the cultural landscapes where they are found (Winthrop, 1990: 126–8).

Fundamentally, traditional subsistence economies declined because of the removal of Indian communities to reservations, the seizure of tribal territories, and the encroachment of Euro-American institutions on native

life. Even in the southern Columbia plateau of northern Oregon and southern Washington, where treaties recognized tribal rights to off-reservation hunting, gathering, and fishing, the economic effects of white conquest were profound. Available stocks of game declined, both because of direct competition by anglo trappers and settlers, and because the introduction of firearms made hunting more efficient. Native vegetable foods decreased because they often grew in areas where settlers farmed, logged, or pastured their animals (Lane & Lane Associates and Nash, 1981: 68–71). By the mid-20th century the Columbia River fisheries, which had been a staple of the region's native economies, had been badly damaged by the construction of hydroelectric dams, commercial overfishing, Euro-American logging and grazing practices, diversion of stream flow for irrigation, urban wastewater discharge, agricultural runoff, and industrial pollution (Hewes, 1973: 147; 1998: 635–40).

Suppression of native languages

From language we derive both our most basic sense of social identity and our most essential means of cognition. That language difference frequently reflects boundaries of ethnicity or nationality is obvious. Somewhat less obvious but equally important, a language defines the world for its speakers (Hoijer, 1974: 121). Different languages provide different lenses for human experience, both because each grammar constructs categories such as time, person, and causality differently, and because few words in one language have exact semantic equivalents in another (Whorf, 1956; Schaff, 1973). For these reasons the control of language—discouraging or prohibiting the use of particular languages or dialects; elevating others to the status of official or national languages—offers a powerful tool of statecraft. Since at least the 18th century national language policies have provided an essential tool for social homogenization and state-building. Conversely, language rights have been central to many of the modern political struggles by native peoples and non-native ethnic minorities (Skutnabb-Kangas, 1999: 46).

In the United States, federal policy from at least the 1870s made suppression of Indian languages an explicit goal. The reluctance of Indian children to abandon their natal languages was a source of great frustration to 19th-century administrators. The 1886 annual report of the Commissioner of Indian Affairs acknowledged, 'The greatest difficulty is experienced in freeing the children attending day schools from the language and habits of their untutored and often savage parents' (in Noriega, 1992: 380). Richard Henry Pratt, founder of Carlisle Indian School (established 1879) asserted straightforwardly:

The end to be gained is the complete civilization of the Indian . . . [and] the sooner all tribal relations are broken up; the sooner the Indian loses all his Indian ways, even his language, the better it will be. (In Szasz and Ryan, 1988: 291)

Forced division of collectively held lands

The control of land closely mirrors the key organizing assumptions of a society. Hunting/gathering economies, which characterized most pre-contact societies in native North America, demonstrate wide variability in the control of land and resources. Certain resources could be tightly controlled by social groups: for example, family ownership of particular fishing stations on the Columbia River (Hunn and Selam, 1990: 93–4). In other environments groups asserted at best a very loose oversight of particularly areas, without excluding their use by other groups—as was the case for the Western Shoshone in the arid Great Basin (Steward, 1938: 253–4). In general, families or other economic units limited access to abundant resources distributed in discrete locations, such as prime fishing sites. In contrast, attempting to regulate access to scarce or unpredictable resources distributed over large territories, such as deer or edible roots, would be impractical. These tended to be used in common by a community, band, or tribe (Cashdan, 1989: 40–2). Yet despite wide variation in the control of resources, land as such was not individually owned. Territory was not possessed in a Euro-American sense of fee-simple ownership at all. What was regulated was—at most—the rights of access to land and use of its resources: usufruct.

Precisely because in traditional native societies land was an attribute and sustainer of the community as a whole, the forced division of tribal lands could be a powerful tool of social engineering. The US government undertook just such a program in the late 19th century through a series of Allotment Acts, notably the General Allotment (Dawes) Act of 1887 (Cohen, 1982: 98–102, 128–34). By transforming tribal lands into individually held properties the federal government sought to ‘break the hold of the chiefs over individual Indians, encourage them to become farmers, and hasten their assimilation into white culture’ (Carlson, 1996: 27). Moreover, the Allotment Acts provided a means to transfer resource-rich tribal lands to white farmers and stockmen, as well as timber and mining companies.

A Threshold for Cultural Rights

How should one evaluate these six assaults on native ways of life? Are their impacts on indigenous cultural systems equally destructive? On the contrary, while acknowledging that all six cases attack native cultural prerogatives, it is both feasible and useful to differentiate between greater and lesser harms. If so, one could at least in principle distinguish between those harms that should be opposed by invoking the concept of cultural rights, and others that could best be treated through less unilateral measures.

The model of cultural integrity sketched earlier provides one basis for

drawing such distinctions. Culturally significant acts and avoidances tether a community to its defining knowledge and experience. Such actions continually recreate a system of social relationships, while in the process applying and revising the cultural knowledge through which social life is constituted.

In building a model of social life that is appropriate for discussing questions of rights and policy, it is important to avoid either of two extremes in conceptualizing the relation of individual and society. On the one hand, we should avoid an 'oversocialized' view in which norms, rules, and consensus values simply determine behavior—an assumption, in other words, of unilateral *structure*. On the other extreme, we should avoid a wholly phenomenological or postmodernist view that cannot recognize social knowledge more definitive than a multiplicity of personal, subjective perspectives, in which society is simply 'the plastic creation of human subjects' (Giddens, 1984: 26). This is the assumption of unilateral *agency*. To make structure fully determinative is to make significant social change either theoretically impossible or catastrophically disorganizing. To make agency fully determinative is to make social life infinitely malleable, and thus to make the power of tradition and cultural identity incomprehensible. For 'structure' and 'agency' are both present in every moment of social life, being two sides of the same coin. As Anthony Giddens says, 'the structural properties of social systems are both medium and outcome of the practices they recursively organize . . . Structure is not to be equated with constraint but is always both constraining and enabling' (Giddens, 1984: 25).

This seemingly abstruse argument has practical consequences. For in recognizing the duality of structure and agency, or more concretely the interdependence of cultural knowledge and social practices, we see why culture is so vulnerable to disruption. Traditions matter—they are necessary to social life—yet they cannot perpetuate themselves. Cultural knowledge, once relinquished, is not like an encyclopedia or a telephone book, always ready to provide guidance should someone wish to pick it up. In *The Invention of Culture*, Roy Wagner frames the argument in these terms:

The symbolic associations that people share in common, their 'morality,' 'culture,' 'grammar,' or 'customs,' their 'traditions,' are as much dependent upon continual reinvention as the individual idiosyncrasies, details, and quirks that they perceive in themselves or in the world around them. (Wagner, 1981: 50–1)

Absent such 'continual reinvention', traditions slip beyond our grasp. 'Someone lacking a tradition who would like to have one', Ludwig Wittgenstein remarked, 'is like a man unhappily in love' (Wittgenstein, 1980: 76). For this reason there is considerable justification for a cultural rights policy directed at protecting the continuity of social life and therefore the reproduction of cultural knowledge.

Yet the notion of 'knowledge' is complex. To find a practical basis for

assessing how particular policies might affect cultural integrity, some distinctions are needed.

In this context probably the least significant (though in a western context the most prestigious) is *semantic knowledge*: that is, knowledge that can be fully verbalized or explained (Sperber, 1975: 113). This is 'knowledge that'—the knowledge, so to speak, of scholarly journals, computer databases, and almanacs. But cultural life is not reducible to such knowledge. Michael Polanyi offers a useful analogy (1969: 144). The techniques needed to ride a bicycle successfully reflect the laws of physics, but no study of a physics textbook will impart the necessary skills. The knowledge needed is not theoretical but tacit, literally embodied in the learned coordination of the muscles, eyes, and vestibular nerves; it is gained not by study but by practice.

Ethnographic (or other) accounts of a cultural system—Margaret Mead's writings on Samoa, for example—are analogous to the physics textbooks. They provide semantic knowledge concerning the traditions of other peoples, but they cannot in any true sense impart these traditions themselves. In short, a tradition cannot be learned theoretically, by the contemplation of abstract rules or objective descriptions. Rather, it must be communicated through participation in the life of a community. Instead of a discursive or semantic 'knowledge that', these other modes of knowledge are largely tacit and contextual: 'knowledge of' or 'knowledge how', variously practical, symbolic, or performative (Gadamer, 1975: 5–39; Giddens, 1984: ch. 1; Scott, 1998: ch. 9).

These distinctions aside, such non-discursive knowledge is acquired and reproduced within distinctive social contexts, and in fact cannot truly exist outside of them. Thus, the knowledge involved in being a skilled dipnet fisherman cannot be divorced from the social setting of Indian fisheries. It entails not only detailed knowledge of the various runs of fish and their seasonality, but the characteristics of particular fishing sites, their mythical associations, the techniques of crafting the dipnet and other tools, the respect with which the fish must be treated as fellow beings, and the etiquette of social interaction and sharing of the catch that governs appropriate behavior at the fishing site. 'A living culture is so much a part of a people', Vine Deloria and Clifford Lytle write,

... that it is virtually incapable of recognition and formal academic transmission. Expecting schools to do the task formerly assumed spontaneously by parents, friends, relatives, and the community in concert is only to reduce tribal culture to a textbook phenomenon. (Deloria and Lytle, 1984: 250)

Returning to the examples of adverse impacts to American Indian societies: can one differentiate between these situations in terms of their respective impacts to cultural integrity? Not all issues affecting culturally distinctive communities should be seen as violations of fundamental rights.

The dividing line between cases that are fundamentally disruptive of cultural integrity and others that are not can be termed the *cultural rights threshold*. In this sense we cross the threshold when the policy in question has the clear potential to interfere with the transmission of critical cultural knowledge through the reproduction of a distinctive community life. By that analysis,

- intentional restriction of subsistence hunting and gathering
- suppression of native languages, and
- forced division of collectively held lands

would in my view meet the threshold test. Each example involves a systematic policy rather than an isolated act. Each fundamentally disrupts (and in most cases from native North America, was generally *intended* to disrupt) the process of cultural transmission. The effect may be direct, as in suppression of native languages; or indirect, as in the disruption of a subsistence economy or the dismantling of a social system based on collective land ownership.

In contrast, by this standard,

- commercial use of names and designs
- resource development affecting significant sites, and
- scientific appropriation of human remains

would fall below the rights threshold. Such actions are often offensive, and may well merit redress. But I suggest that actions such as these must be considered not as categorical wrongs, but as the reflection of contending values and policies, all of which may have some justification.

In the case of native North America, the three examples that would meet the rights threshold have all received some redress, either through reforming legislation or case law. In many cases the restriction of native subsistence hunting and gathering was rolled back by successful litigation. Federal court decisions of the 1970s and 1980s, for example, dramatically increased the tribal share of Columbia River fisheries (Cohen, 1986). Federal legislation to reform Indian education, such as the Indian Self-Determination and Education Assistance Act of 1975 (88 US Stat. 2203), reversed the US government's policy of suppressing native languages (Szasz and Ryan, 1988: 297–300). Finally, the forced division of collectively held Indian lands was reversed, at least as policy, by the Indian Reorganization Act of 1934 (48 US Stat. 984; Nash, 1988: 265–7).

While issues above the proposed threshold may merit the greatest concern, these are conceptually fairly straightforward. Far less clear from the standpoint of ethics and policy are those cases—the vast majority of asserted cultural practices—which merit consideration but would likely fail the test of the cultural rights threshold proposed here. I suggest that this is the major policy challenge in the domain of so-called cultural rights.

Alternative Models of Cultural Conservation

In the remainder of this article I suggest three models for treating such cases: regulatory balancing, organizational strategies, and cultural exceptions to conserve cultural integrity. Such approaches could offer part of a systematic policy response to the challenge of balancing cultural claims with other societal needs.

Regulatory balancing

Regulatory assessments of social impacts involve balancing the values of particular cultures and communities against other competing values, judged against explicit criteria. In the USA a good example is found in the protection of sites having cultural significance (in governmental jargon, traditional cultural properties) through the National Historic Preservation Act (NHPA: 16 USC 470). In 1990 the National Park Service issued guidelines for assessing and protecting such cultural 'properties'. To merit protection, such sites must reflect an association 'with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community' (US Dept of Interior, 1990: 1). Nonetheless, such protections are not absolute, but must be weighed against other competing values, such as the economic value of resource development (Winthrop, 1994, 1998b).

In practice, the test provided by the NHPA works in conjunction with the process of environmental impact assessment mandated by the National Environmental Policy Act (NEPA: 42 USCA 4321). Development that would affect qualifying sites—for example, logging, mining, road building, or constructing recreational facilities—constitutes a negative impact in the environmental assessment process, if the disturbance alters those qualities of a place that justified its designation as a traditional cultural property. The potential for negative impacts does not in itself prevent a project from going forward. But NEPA requires the responsible government agency to attempt to identify alternatives that avoid such impacts. If the final configuration of the proposed project nonetheless includes adverse effects, the agency must justify its choice (40 CFR 1502). Thus under US environmental policy the value of conserving culturally significant sites must be weighed in the balance against other values, among them economic values such as commodity production, energy generation, and recreation.

How does this work in practice? In 1988 an Indian tribe challenged the expansion of the 'Cascade Ski Project', a facility operating under US Forest Service permit in America's Pacific Northwest. The ski project had operated for several decades as a winter season day-use facility, without opposition from the tribe on whose aboriginal lands it was sited. The proposed expansion, in contrast, attracted strong opposition from the tribe. It would

double visitor capacity by adding lifts and increasing permit acreage and parking; create 500 units of hotel accommodation, together with conference facilities, retail services, and a mountainside restaurant; and would operate year-round, adding warm weather activities such as rock climbing (Winthrop, 1994).⁷

The tribe's public comment expressed serious concerns about the effects of the ski project expansion on fisheries, deer and elk habitat, and a wide range of plants collected in the project area, including huckleberries, pine nuts, camas, bear grass, and medicinal plants. The tribal statement also reflected broader spiritual concerns:

All these materials are sacred in our cultures. Also held in reverence are the sites associated with the collecting of these resources—the camps . . . which our people inhabited, the burial locations of those who were left in the mountains, areas where people prayed and sought guardian spirits and power, and even trails leading to all these places.

I was hired by the Forest Service to document the cultural significance of the project area for the Indian community, and the cultural impacts posed by the ski expansion. This study involved four other researchers (three of them tribal members) conducting some 60 interviews over a four-month period. We demonstrated that the project area was culturally sensitive because it flanked the upper reaches of a river noted for both its spiritual and physical purity. Moreover, the ski area contained a wide range of traditional resources, including a variety of berries and other edible plants, numerous medicinal plants, game animals, and other materials used in both ritual and crafts. Several of these resources constituted a cultural complex unique to the project area. Seasonality formed an important aspect of the project's effects. Tribal members viewed the presence of day-use visitors in the winter months as far less intrusive than at other times of the year, when elders and other tribal members traveled to the project area to collect foods and medicines.

Based on this information, our report suggested that the tribe might have less objection to expanded day-use skiing if the proposal deleted plans for a hotel/resort complex in the sensitive river drainage and for year-round use of the facility, when culturally sensitive medicines would not be protected by snow cover. This position was subsequently adopted by the tribal government. Ultimately the Forest Service restricted ski facility improvements to the existing permit area and allowed operation of a summer 'ski' camp, but denied permission for the hotel/resort complex or expansion of operations into the culturally sensitive drainage. In short, the project was dramatically scaled back to comply in most respects with tribal concerns. From a tribal perspective, this was a significant victory, but it also struck a balance with the strong public support in the region for enhanced facilities for winter recreation.

Organizational strategies

Certain organizational designs for vulnerable communities can increase cultural resilience in the face of dominant institutions. Drawing again on examples from American Indian societies, such solutions can involve *internal organization* (such as a division of responsibility that balances conserving traditional knowledge with conducting applied scientific research), or *external relationships* (such as formalized modes of cooperation and consultation between tribes and private firms or government agencies).

Internal organization. Tribes stand in a unique position in US law: they are first and foremost dependent sovereign nations. In their relations with non-Indian society tribes speak with at least three voices. First, they act in their political role through a tribal council. Second, they are also bureaucracies. Larger tribes are staffed by managers and technical experts such as wildlife or fisheries biologists, who share perspectives with their counterparts in non-tribal organizations. Third, and most critically, tribes speak through those considered to be their most traditional members, as the best embodiment of local, contextualized knowledge and effective judgement. Organizationally a modern tribe resembles an antique scale, one arm carrying the testimony of tradition, the other weighted with the findings of dominant knowledge systems: the sciences, economics, and law. Tribal leadership is at the balance point, seeking through its decisions to reconcile contending perspectives.

This epistemological division of labor was demonstrated in a study ordered by the US Federal Energy Regulatory Commission (FERC) to assess the effects of dam operations, located on a tributary of the Columbia River in Washington state, on treaty-based tribal fishing rights.⁸ As in many other battles over dams on the Columbia River system, tribal fisheries biologists provided an independent scientific assessment of the dam's effects on the rapidly dwindling runs of salmon (Winthrop, 1999: 82). In parallel to this effort, the tribe's Cultural Resources Program collected testimony from elders regarding uses of the river, the communities that had grown up along its banks, and the relation of these fishing sites to other traditional resource sites visited during the annual subsistence round. Both types of knowledge were used by the tribal council in voicing opposition to continued operation of the dam.

External relationships. In the hydro licensing case just cited, the utility requesting a renewal of its license had a responsibility to assess the project's effects on tribal fisheries. (The utility hired me to conduct this study.) Yet because much of the assessment depended on traditional knowledge held within the reservation community, it could not do so effectively without the cooperation of the tribe. The tribe's Cultural Resources Program, in turn,

was swamped by many such requests for a 'cultural' perspective in support of federal environmental and resource development decisions. The FERC dealt with this dilemma by ordering the utility and the tribe to negotiate an agreement for cooperating on the needed research. The resulting protocol provided a fully collaborative research process, provided funding by the utility for a tribal staff member to work on the project, and offered safeguards regarding the use of sensitive cultural information (Winthrop and Sterrett, 1996). This agreement effectively strengthened the tribal 'voice' in the hydro license process by providing a practical means for translating relevant traditional knowledge into a form usable by utility officials and federal regulators.

Finally, US laws and regulations provide extensive mandates for federal agencies to consult with tribal governments in setting policy and reaching decisions that could affect tribal communities. Reflecting the difficulties of meaningful discussion across the cultural divide separating Indian communities from mainstream American institutions, regulations may require consultation that is more formal and extensive than that undertaken by federal agencies with the general public. The tribal consultation provisions of the National Historic Preservation Act offer a case in point. In other cases US laws and executive orders create consultation processes specific to tribal concerns. Examples include the American Indian Religious Freedom Act (1978); the Native American Graves Protection and Repatriation Act (1990); and Executive Order 13175 (2000), 'Consultation and Coordination with Indian Tribal Governments'.⁹

Policy exceptions

A third strategy for conserving cultural integrity is to recognize a 'cultural exception' within policies that in principle promote uniformity in values or structures. Very briefly, here are two examples.

Language rights and 'official English'. A number of organizations advocate that English be adopted as the official language of the USA and used as the exclusive medium of government business. Like other proposals to safeguard a dominant language (for example in Quebec, France, or Germany) this remains controversial. Yet it is perfectly consistent to advocate adoption of a national language and still recognize a basis for cultural exceptions. One English-only advocacy group, U.S. English, argues that American Indian communities should be exempted from such a requirement:

U.S. English recognizes that Native American languages are in a unique situation. These languages were spoken by Native Americans before Europeans arrived on this continent. . . . The autonomy of Native American tribes and communities also gives them a special status within the political framework of the United States. Therefore Official English legislation proposed by U.S. English does not prevent the use of Native

American languages by tribal governments and other autonomous Native American communities.¹⁰

Cultural exceptions in environmental policy. Responding to international concerns over the depletion of whale stocks, in 1982 the International Whaling Commission (IWC) imposed a moratorium on all commercial whaling (Aron et al., 1999: 24). Exceptions were allowed for hunting for the purpose of research into whale management, and for subsistence use by native communities, which in practice primarily includes Inuit communities of the Russian Far East, Alaska, Canada, and Greenland. As the Australian delegate to the IWC stated in 1994 in support of the cultural exception for subsistence whaling:

We are aware of how strong and, at the same time, how fragile can be the forces that maintain community structure and cohesion, and how important these issues are, particularly to traditional people in coastal environments. (In Freeman et al., 1998: 107)

Conclusions

There is every likelihood that assertions of cultural rights will play an ever growing role in the world of public policy. The forces of globalization work paradoxically both to threaten distinctive traditions with obliteration and to encourage the assertion of new and more strident identities. We may seek to counter the forces of cultural homogenization, and at the same time rightly fear the results of unrestrained ethnic or national assertion—one need only consider the bitter harvest of cultural difference reaped in Rwanda or Bosnia.

Claims of cultural rights represent the most varied terrain. Yet effective policy requires defensible grounds for drawing distinctions between cases. Today claims based on culture have outstripped the conceptual tools and the policy options available for evaluating and accommodating them. One may well agree that ethnic, religious, or linguistic minorities should be able—to quote again the Covenant on Civil and Political Rights—‘to enjoy their own culture’. Still, to put force behind that bland promise requires an ability to distinguish between those situations that truly jeopardize the continuity of a community and a tradition, and those that do not. At least, I have suggested that this is a reasonable basis for defining a threshold test in evaluating claims based in culture. Others may suggest alternative ways of drawing a line between categorical and conditional affronts to cultural integrity, but some sort of threshold is needed.

Finally, I have mentioned a few strategies through which cultural concerns failing such a threshold test can be constructively treated. These are offered simply as an indication of how solutions can be crafted to institutionalize a place for cultural distinctiveness within the manifold goals of

national and international policy. This type of policy innovation is critically needed to provide balanced solutions reconciling the needs of culturally distinctive communities with the equally legitimate objectives of preserving social order and equity for all citizens.

NOTES

1. A first version of this article was presented to the Culture in International and Public Affairs Working Group, School of International and Public Affairs, Columbia University, New York, in November 1999. My thanks to the members of the Working Group for their hospitality and thoughtful comments, as well as to fellow panelists in a session concerning 'The Right to Culture: Policy Dilemmas and Challenges', Society for Applied Anthropology annual meeting, San Francisco, April 2000, which also provided a forum for these arguments. For their helpful comments and critique I express thanks to my wife Kathryn Winthrop and to Steve Suranovic, Department of Economics, George Washington University, Washington, DC. Neither is responsible for the end result.
2. The Amish case was decided by the US Supreme Court in *Wisconsin v. Yoder*, 406 US 205 (1972).
3. Kevin Gover, Assistant Secretary of Interior for Indian Affairs and a Pawnee tribal member, says of the Cleveland Indians logo, 'It infects, and thereby affects people's attitudes toward Indians' (Stout, 2000).
4. *Badoni v. Higginson*, 638 F.2d 172 (10th Cir. 1980); *Sequoyah v. Tennessee Valley Authority*, 620 F.2d 1159 (6th Cir.); *Wilson v. Block*, 708 F.2d 735 (DC Cir.); and *Crow v. Gullett*, 706 F.2d 856 (8th Cir.).
5. *Lyng v. Northwest Indian Protective Association*, 485 US 439 (1988).
6. Native American Graves Protection and Repatriation Act, 1990: 104 Stat 3048, 25 USC 3001 et seq.
7. For reasons of confidentiality I have omitted information that would precisely identify the project, the location, or the Indian group. See Winthrop, 1994.
8. Respecting tribal concerns for the confidentiality of cultural data, I only present information on the process of assessing impacts, and not on the substantive findings, nor do I identify the specific tribe.
9. National Historic Preservation Act: §101: 16 USC 470a, amended 1992; American Indian Religious Freedom Act: 42 USC 1996; Native American Graves Protection and Repatriation Act: PL 101-601; and Executive Order 13175: *Federal Register* 65 (218): 67249-52.
10. Source: US English website, <http://www.us-english.org/inc/official/native.asp>; accessed 18 March 2001.

REFERENCES

- Anon. (1998) 'Culture Wars', *Economist* 348(8085) (12 Sept.): 97-9.
- Aron, William, William Burke and Milton Freeman (1999) 'Flouting the Convention', *Atlantic Monthly* (May): 22-9.

- Bell, Diane (1998) *Ngarrindjeri Wurrurarrin: A World That Is, Was, and Will Be*. North Melbourne, Australia: Spinifex Press.
- Bellah, Robert N., Richard Madsen, William M. Sullivan, Ann Swidler and Steven M. Tipton (1991) *The Good Society*. New York: Random House.
- Brand, Stewart (1988) 'Indians and the Counter-Culture, 1960s–1970s', in W.E. Washburn (ed.) *Handbook of North American Indians*, vol. 4: *History of Indian–White Relations*, pp. 570–2. Washington, DC: Smithsonian Institution.
- Brumann, Christoph (1999) 'Writing for Culture', *Current Anthropology* 40 (supplement): S1–S27.
- Carlson, Leonard A. (1996) 'Allotment', in M.B. Davis (ed.) *Native America in the Twentieth Century: An Encyclopedia*, pp. 27–9. New York: Garland.
- Cashdan, Elizabeth (1989) 'Hunters and Gatherers: Economic Behavior in Bands', in Stuart Plattner (ed.) *Economic Anthropology*, pp. 21–48. Stanford, CA: Stanford University Press.
- Chatters, James C. (2000) 'The Recovery and First Analysis of an Early Holocene Human Skeleton from Kennewick, Washington', *American Antiquity* 65(2): 291–316.
- Clinton, Robert N., Nell J. Newton and Monroe E. Price (1991) *American Indian Law: Cases and Materials*. Charlottesville, VA: Michie Bobbs-Merrill.
- Cohen, Faye G. (1986) *Treaties on Trial: The Continuing Controversy over Northwest Fishing Rights*. Seattle: University of Washington Press.
- Cohen, Felix S. (1982) *Felix S. Cohen's Handbook of Federal Indian Law*, ed. R. Strickland. Charlottesville, VA: Michie Bobbs-Merrill.
- Deloria, Vine, Jr and Clifford M. Lytle (1984) *The Nations Within: The Past and Future of American Indian Sovereignty*. New York: Pantheon.
- Echo-Hawk, Walter R. and Roger C. Echo-Hawk (1991) 'Repatriation, Reburial, and Religious Rights', in Christopher Vecsey (ed.) *Handbook of American Indian Religious Freedom*, pp. 63–80. New York: Crossroad.
- Freeman, Milton M. R., Lyudmila Bogoslovskaya et al. (1998) *Inuit, Whaling, and Sustainability*. Walnut Creek, CA: AltaMira Press.
- Gadamer, Hans-Georg (1975) *Truth and Method*. New York: Seabury Press.
- Giddens, Anthony (1984) *The Constitution of Society: Outline of the Theory of Structuration*. Berkeley: University of California Press.
- Goldstein, Lynne (1996) 'Reburial and Repatriation', in Brian M. Fagan (ed.) *The Oxford Companion to Archaeology*, pp. 589–90. New York: Oxford University Press.
- Greenberg, Joel (1996) 'Jerusalem Road is Secular–Religious Battleground', *New York Times* (15 July): A3.
- Haley, Brian and Larry Wilcoxon (1997) 'Anthropology and the Making of Chumash Tradition', *Current Anthropology* 38(5): 761–94.
- Hartney, Michael (1995) 'Some Confusions Concerning Collective Rights', in Will Kymlicka (ed.) *The Rights of Minority Cultures*, pp. 202–227. Oxford: Oxford University Press.
- Hewes, Gordon W. (1973) 'Indian Fishing Productivity in Pre-Contact Times in the Pacific Salmon Area', *Northwest Anthropological Research Notes* 7: 133–55.
- Hewes, Gordon W. (1998) 'Fishing', in Deward E. Walker, Jr (ed.) *Plateau*, vol. 12: *Handbook of North American Indians*, pp. 621–40. Washington, DC: Smithsonian Institution.

- Hoijer, Harry (1974) 'The Sapir-Whorf Hypothesis', in Benjamin G. Blount (ed.) *Language, Culture and Society: A Book of Readings*, pp. 120–131. Cambridge, MA: Winthrop.
- Hunn, Eugene S. and James Selam (1990) *Nch'i-Wána, 'The Big River': Mid-Columbia Indians and their Land*. Seattle: University of Washington Press.
- Institute for Natural Progress (1992) 'In Usual and Accustomed Places: Contemporary American Indian Fishing Rights Struggles', in M.A. Jaimes (ed.) *The State of Native America: Genocide, Colonization, and Resistance*, pp. 217–39. Boston, MA: South End Press.
- Johnson, Wayne (1999) 'Harvest from the Sea', *New York Times* (21 May).
- Johnston, Greg (1999) 'Washington's Ancient Rock Art Attracts the Curious—and the Vandal', *Seattle Post-Intelligencer* (online edn, 3 June).
- Keyser, James D. (1992) *Indian Rock Art of the Columbia Plateau*. Seattle: University of Washington Press.
- Kymlicka, Will (1995) *Multicultural Citizenship*. Oxford: Oxford University Press.
- Lambert, Patricia M. (1996) 'Analysis of Human Remains', in Brian M. Fagan (ed.) *The Oxford Companion to Archaeology*, pp. 327–9. New York: Oxford University Press.
- Lane & Lane Associates and Douglas Nash (1981) *The White Salmon River Indian Fisheries and Condit Dam*. Report prepared for the U.S. Department of Interior, Bureau of Indian Affairs. Portland, OR.
- Lee, Mike (2000) 'Tribes Hail Kennewick Man Decision', *Tri-City Herald* (27 Sept.).
- Manners, Bruce (1995) 'Bridge Row Exposes Aboriginal Myth of "Women's Business"', *Sunday Telegraph* (Lexis-Nexis, 4 June): 28.
- Moore, Steven C. (1991) 'Sacred Sites and Public Lands', in Christopher Vecsey (ed.) *Handbook of American Indian Religious Freedom*, pp. 81–99. New York: Crossroad.
- Nash, Philleo (1988) 'Twentieth Century United States Government Agencies', in W. E. Washburn (ed.) *Handbook of North American Indians*, vol. 4: *History of Indian-White Relations*, pp. 264–75. Washington, DC: Smithsonian Institution.
- Noriega, Jorge (1992) 'American Indian Education in the United States', in M.A. Jaimes (ed.) *The State of Native America: Genocide, Colonization, and Resistance*, pp. 371–402. Boston, MA: South End Press.
- Page, Ellen A. (1990) 'The Scope of the Free Exercise Clause: *Lyng v. Northwest Indian Cemetery Protective Association*', *North Carolina Law Review* 68: 410–22.
- Polanyi, Michael (1969) *Knowing and Being: Essays by Michael Polanyi*, ed. M. Grene. Chicago, IL: University of Chicago Press.
- Rose, Jerome C., Thomas J. Green and Victoria D. Green (1996) 'NAGPRA is Forever: Osteology and the Repatriation of Skeletons', *Annual Review of Anthropology* 25: 81–103.
- Rose, Wendy (1992) 'The Great Pretenders: Further Reflections on Whiteshamanism', in M.A. Jaimes (ed.) *The State of Native America: Genocide, Colonization, and Resistance*, pp. 403–21. Boston, MA: South End Press.
- Schaff, Adam (1973) *Language and Cognition*, tr. O. Wojtasiewicz. New York: McGraw-Hill.
- Scott, James C. (1998) *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed*. New Haven, CT: Yale University Press.

- Skutnabb-Kangas, Tove (1999) 'Linguistic Diversity and Language Rights', in Darrell A. Posey (ed.) *Cultural and Spiritual Values of Biodiversity*, pp. 46–56. London: Intermediate Technology Publications.
- Sperber, Dan (1975) *Rethinking Symbolism*, tr. A.L. Morton. Cambridge: Cambridge University Press.
- Steiner, Henry J. and Philip Alston (1996) *International Human Rights in Context: Law, Politics, Morals—Text and Materials*. Oxford: Clarendon Press.
- Steward, Julian H. (1938) *Basin-Plateau Aboriginal Sociopolitical Groups*. Bureau of American Ethnology, *Bulletin* 38. Washington, DC: Government Printing Office.
- Stout, David (2000) 'No Place for John Wayne at Indian Bureau', *New York Times* (Washington edn, 22 Sept.): A12.
- Szasz, Margaret C. and Carmelita Ryan (1988) 'American Indian Education', in W.E. Washburn (ed.) *Handbook of North American Indians*, vol. 4: *History of Indian-White Relations*, pp. 284–300. Washington, DC: Smithsonian Institution.
- Taylor, Colin F. (1988) 'The Indian Hobbyist Movement in Europe', in W.E. Washburn (ed.) *Handbook of North American Indians*, vol. 4: *History of Indian-White Relations*, pp. 562–9. Washington, DC: Smithsonian Institution.
- Thornton, Russell (1996) 'Repatriation of Human Remains and Artifacts', in Mary B. Davis (ed.) *Native America in the Twentieth Century: An Encyclopedia*, pp. 542–4. New York: Garland.
- Tonkinson, Robert (1997) 'Anthropology and Aboriginal Tradition: The Hindmarsh Island Bridge Affair and the Politics of Interpretation', *Oceania* 68(1): 1–26.
- Trillin, Calvin (1994) 'Drawing the Line', *New Yorker* (12 Dec.): 50–62.
- US Department of Interior (1990) 'Guidelines for Evaluating and Documenting Traditional Cultural Properties', *National Register Bulletin* 38. Washington, DC: US Government Printing Office.
- Van Dyke, Vernon (1995) 'The Individual, the State, and Ethnic Communities in Political Theory', in Will Kymlicka (ed.) *The Rights of Minority Cultures*, pp. 31–56. Oxford: Oxford University Press.
- Wagner, Roy (1981) *The Invention of Culture*, revised edn. Chicago, IL: University of Chicago Press.
- Weiner, James F. (1999) 'Culture in a Sealed Envelope: The Concealment of Australian Aboriginal Heritage and Tradition in the Hindmarsh Island Bridge Affair', *Journal of the Royal Anthropological Institute* NS 5: 193–210.
- Whorf, Benjamin L. (1956) 'Science and Linguistics', in B.L. Whorf *Language, Thought and Reality*. Cambridge, MA: MIT Press.
- Winkelman, Michael (1996) 'Cultural Factors in Criminal Defense Proceedings', *Human Organization* 55(2): 154–9.
- Winthrop, Robert H. (1990) 'Persistent Peoples: Mechanisms of Cultural Survival in Southern Oregon and Northwestern California', in N. Hannon and R.K. Olmo (eds) *Living with the Land: The Indians of Southwest Oregon*, pp. 125–31. Medford, OR: Southern Oregon Historical Society.
- Winthrop, Robert H. (1994) 'Conflicting Perceptions of Nature, Risk, and Change', *Practicing Anthropology* 16(3): 25–8.
- Winthrop, Robert H. (1998a) 'Commentary: Haley and Wilcoxon's "Anthropology and the Making of Chumash Tradition"', *Current Anthropology* 39(4): 496–9.

- Winthrop, Robert H. (1998b) 'Tradition, Authenticity, and Dislocation: Some Dilemmas of Traditional Cultural Property Studies', *Practicing Anthropology* 20(3): 25-7.
- Winthrop, Robert H. (1999) 'Resource Stewardship by Middle Columbia Tribes of the American Pacific Northwest', in Darrell A. Posey (ed.) *Cultural and Spiritual Values of Biodiversity*, pp. 79-82. London: Intermediate Technology Publications.
- Winthrop, Robert H. and Jill Sterrett (1996) 'The Value of Collaborative Research: Developing a Protocol for Traditional Cultural Property Studies', presentation to Edison Electric Institute National Workshop, Bellevue, WA.
- Wittgenstein, Ludwig (1980) *Culture and Value*, tr. Peter Winch. Chicago, IL: University of Chicago Press.
- Yellow Bird, Pemina and Kathryn Milun (1994) 'Interrupted Journeys: The Cultural Politics of Indian Reburial', in Angelica Bammer (ed.) *Displacements: Cultural Identities in Question*, pp. 3-24. Bloomington: Indiana University Press.
- Zimmerman, Larry J. (1997) 'Anthropology and Responses to the Reburial Issue', in Thomas Biolsi and Larry J. Zimmerman (eds) *Indians and Anthropologists: Vine Deloria, Jr. and the Critique of Anthropology*, pp. 93-112. Tucson: University of Arizona Press.

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