

Hybridity

DEF: In a cultural context, hybridity can be understood as an amalgamation or blending of different cultures and traditions via ‘cross-cultural negotiation’ or learning processes (Duxbury / Simons / Warfield, 2006). Learning from the experiences of both traditional and new minorities about ‘shared spaces’ and individual biographies demonstrating ‘multiple identities’ can lead to productive insights, in that respect.

INSTR: While the term ‘hybridity’ as such is not yet found in legal instruments, the 2005 *UNESCO Convention* calls for related policies and measures that help to ‘develop cultural interaction in the spirit of building bridges among peoples’ (Article 1(d)) and to generate ‘shared cultural expressions through dialogue and mutual respect’ (Article 4(8)). The Council of Europe *Framework Convention on the Value of Cultural Heritage for Society* sees a need to ‘establish processes for conciliation to deal equitably with situations where contradictory values are placed on the same cultural heritage by different communities’ (Article 7(b)) and to ‘reinforce social cohesion by fostering a sense of shared responsibility towards the places in which people live’ (Article 8(c)). Clearly, answering to such demands is less an issue for national and international courts and much more one for cultural policies with an intercultural perspective.

VIEWS: During the last decades, hybridity became a central topic in cultural studies. Some authors see cultural hybridisation as part of globalisation or ‘glocalisation’ processes leading to ‘crossover cultures’ or ‘translocal mélange’ (Nederveen Pieterse, 2003), others speak of a ‘World in Creolisation’ (U. Hannerz, 1987), ‘Bricolage’ (J. Okely, 1994), ‘blended worlds’ (H. Bhabha, 1994) or ‘Cultural Syncretism’ (M. Canevacci, 1992). However, hybridity should not be mistaken as merely an academic playground, as demonstrated in a self-reflection of football hero Zinedine Zidane: ‘Every day I think about where I come from and I am still proud to be who I am: first, a Kabyle from La Castellane (a neighbourhood in Marseille), then an Algerian from Marseille, and then a Frenchman’ (The Observer, 3/4/2004).

CONCL: A hybrid identity means that a human being integrates different experiences, sensitivities, and competences in his/her life. And hybrid cultures or communities are those making use of different experiences, sensitivities, and competences in everyday life, thus shaping the structures and dynamic processes of societies. ‘Inclusion of otherness’ as the core principle of hybridity should not be understood as leading to one-way assimilation or ‘melting pot’ societies and rather as an attempt to capture difference as well as similarity, otherness as well as commonality. Related learning processes have the power to overcome segregation, ‘dualism’ or mono-cultural world-views while recognising the complex allegiances of individuals and groups. Given the current reality of global migration flows and connected issues or fears, an observation of writer Salman Rushdie over 30 years ago could almost be seen as a prophecy: ‘I don’t think that migration, the process of being uprooted, necessarily leads to rootlessness. What it can lead to is a kind of multiple routings. It’s not a traditional identity crisis of not knowing where you come from. The problem is that you come from too many places ... it’s not that there are pulls in too many directions so much as too many voices speaking at the same time’ (New York Times Book Review, 13/11/1983). In a positive connotation, hybridity can be understood as claiming the right to be equal – and different.

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Elka Tschernokoshewa/Andreas Joh. Wiesand

Illicit Trafficking of Cultural Objects

DEF: The Illicit Trafficking of Cultural Objects refers to the movement of stolen and illegally exported art and antiquities. Nearly every nation recognises the need to protect and preserve beautiful and historic objects. As a result, international and domestic laws have been created to protect and preserve cultural objects and archaeological context. The international market in art and antiquities works against many of these restrictions.

INSTR: There has been a concerted international effort to restrict the illicit trafficking in cultural objects. At the international level the UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* defines cultural property as ‘property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science’. Within Europe there are measures to provide the return of objects which have been wrongfully removed. *Council Directive 93/7/EEC* creates a framework for the return of cultural property within the European Union for cultural goods belonging to the national artistic, historical, or archaeological heritage which have been illicitly exported from a member state.

CASES: The →European Court of Human Rights (ECtHR) has had the opportunity to review some cases involving the individual right to property and the public interest in preserving art and culture. However, the Court has demonstrated a reluctance to go beyond a rigid application of the individual right of property under *Protocol I*, →European Convention of Human Rights (ECHR), to weigh the balance between individual rights and the communal interest in cultural objects. Recent legal decisions in the United States and the United Kingdom successfully allowed the application of foreign cultural patrimony laws in

domestic courts. There remains though a great deal more work to be done to harmonise and develop the body of law which focuses on the illicit trafficking of cultural objects.

VIEWS: Much of the international movement of art can be considered illicit trafficking. A helpful distinction has often been made between nations of origin, and market nations. Origin nations often have a wealth of art or archaeological heritage which is valued by the art market. In contrast, market nations import works of art and antiquities. The distinction has proven useful, primarily due to the thoughtful scholarly contributions of the late legal writer John Henry Merryman. However, the distinction reveals its limits when we consider that every work of art or antiquity has a nation of origin. Even the United Kingdom, typically thought of as an important art market, has large quantities of cultural objects. Opponents of strong regulation at the level of nations of origin argue the restrictions merely drive legitimate trade in cultural objects towards the black market, further increasing the criminal and illicit aspects of the art and antiquities trade. On the other hand, advocates of these regulations argue archaeological sites are a limited resource which cannot be commercially exploited. They also point out how the restraints on the sale of cultural objects can limit the theft of cultural objects and looting of cultural patrimony.

CONCL: There are three components to effective regulation of cultural objects: First, an effective legal framework. Secondly, the necessary resources to implement that framework. And lastly, a desire on the part of a nation’s citizens to protect and preserve their heritage. Few legal regimes have been able to effectively implement all three. Progress may be slow, yet the fight against the illicit trafficking of cultural objects moves steadily forward. Cultural patrimony’s key role in human flourishing continues to gain deeper respect in international legal instruments, judicial decisions, and commentary.

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