Toward a Test of Cultural Misappropriation

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Abstract: The use of forms and/or ideas derived from other cultures has recently become a topic of popular debate and no small controversy. As a step towards helping to clarify precisely what does and does not constitute the misappropriation of culture, this study examines two characteristics that seem central to the issue: the "significance" of a form in its original cultural context, and its "recognizability" in its new one. Using examples drawn from a range of fields, the article analyses four permutations of these two characteristics, one of which, culturally significant and immediately recognizable, was initially proposed as a test of misappropriation. The study concludes, however, that the two originally proposed criteria on their own are insufficient to accurately predict potential harm, and hence cultural misappropriation, and that the relative power of the cultures involved would also need to be taken into consideration in order to create a reliable test.

Keywords: Cultural Misappropriation, Significance, Recognizability, Relative Power

Conceptual Framework

Regarded as harmless by some, the practice of reusing forms and ideas derived from other cultures is condemned by others as, at best disrespectful, and at worst potentially damaging to cultural identity (Malik 2017, Bradford 2017). Susan Scafidi, author of one of the first studies to examine this issue from a legal perspective, has defined cultural appropriation as:

> Taking intellectual property, traditional knowledge, cultural expressions, or artifacts from someone else's culture without permission. This can include unauthorized use of another culture's dance, dress, music, language, folklore, cuisine, traditional medicine, religious symbols, etc. It's most likely to be harmful when the source community is a minority group that has been oppressed or exploited in other ways or when the object of appropriation is particularly sensitive, e.g. sacred objects. (Scafidi 2005)

As things stand, however, the law only offers protection to individuals, not to cultures, and the latter is precisely where the current popular debate is focused. As many have pointed out, there is a long tradition of cultures learning from one another to the general betterment of civilization. Writers such as Richard Rogers and Christopher DeGroot, for example, argue that cross fertilization has always been a key part of cultural development (Rogers 2006; DeGroot 2018). Without contact with China, for instance, the rest of the world would have been denied early access to an array of life-changing innovations, from paper to the compass and the mechanical clock (Lin 1995). While these were technological rather than cultural ideas, China's language and art were also absorbed by many of its neighbors. Far from feeling threatened by these adoptions, however, many Chinese people seem to regard them with a sense of pride. As the clearly dominant partner in most of these relationships, China's cultural identity was never in danger, and as several writers have suggested, the relative power of those involved in the cross-cultural reuse of ideas is central to gauging its potential harm (Uwujaren 2013; Galchen and Holmes 2017).

At the other extreme, the reuse of a culture's sacred symbols for profane purposes seems highly likely to offend, particularly if they are debased in the process. The adoption of the swastika—an ancient religious symbol of good fortune in South and East Asia—as a representation of twentieth century Aryan nationalism, for example, irreparably damaged the image of this form in the minds of many (Boissoneault 2017). Depending on the circumstances,

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then, the reuse of ideas derived from other cultures can range from benign interpretation to banal or potentially corrosive distortion.

Appropriation vs. Misappropriation

There is nothing inherently negative about the term "appropriation." Until realatively recently, at least, the word was essentialy neutral, simply describing the act of taking something for one's own use. The United States Senate has a Committee on Appropriations, for example, and it is generally not assumed to be engaged in nefarious acts. There is also a simple prefix that traditionally differentiated unacceptable appropriation from its proper use. Jessica Metcalf has described what she sees as the key differences between simple appropriation and unacceptable misappropriation as they pertain to the exchange of ideas between cultures:

> Cultural appropriation happens every day, especially in the world of fashion. It's the loose idea of borrowing, sharing, and being inspired by other cultures. Cultural appropriation in this sense is an awesome thing. We learn, and we grow. Cultural misappropriation is a land of darkness. It's a place where one culture (most often one that has an historical record of oppressing other cultures) engages in the unauthorized taking of some aspects of another (most often a minority) culture. (Metcalf 2012)

More recently, Devyn Springer has expanded on this distinction, and explained its potential value in defining cultural misappropriation:

> One can understand the use of "misappropriation" as a distinguishing tool because it assumes that there are 1) instances of neutral appropriation, 2) the specifically referenced instance is non-neutral and problematic, even if benevolent in intention, 3) some act of theft or dishonest attribution has taken place, and 4) moral judgement of the act of appropriation is subjective to the specific culture from which it is being engaged. (Springer 2018)

Harm as a Basis for Defining Cultural Misappropriation

Potential damage to a culture or its members would seem to be central to defining what constitutes cultural misappropriation. There are two main ways in which such harm might occur: loss or offense. Loss could involve anything from potential income to cultural identity, for example, while offense might stem from the simple knowledge that ideas had been used without permission or acknowledgement. The issues of harm and offense in cultural appropriation have been a particular focus of the philosopher James Young (2005). While Young differentiates harm from offense, in the eyes of the offended, at least, offense itself might be considered a form of harm in which feelings are hurt.

If simple offense were to be used as a defining criterion, however, cultural misappropriation would be decided entirely on the basis of personal feelings. On this point, Young has argued that causing offense, in and of itself, does not make something inherently wrong, and that to do real harm such offense would have to be both "profound and reasonable" (Young 2005). As Young himself acknowledges, however, this raises the question of who gets to define what constitutes "profound" and "reasonable," and he suggests that this would require general agreement on transcultural ethical values (2005). This would seem to beg the question of whether ethical values either transcend or depend upon culture, however, which is central to the ongoing debate over universalism and relativism.

When it comes to ownership, the reuse of *forms* would appear to be distinct from that of material objects. If someone steals a car and makes radical changes to it in an effort to disguise it, for example, it is still stolen property that belongs to someone else, even if its rightful owner does

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not recognize it anymore. This does not seem to be the same as abstracting a form from another culture to the point that members of that culture no longer recognize it as their own. They might be surprised, annoyed, or even flattered to learn of its origin, but if they cannot recognize it, it would be difficult to claim that its reuse was damaging to their cultural identity.

Two characteristics seem to emerge for the reuse of forms or ideas derived from another culture to potentially cause harm, either to a culture itself or to its members. For either of these to occur, a form or idea would need to be both culturally significant in its original context and also clearly recognizable as deriving from that source in its new context. In other words, neither the identity of a culture nor the feelings of its members could reasonably be claimed to have been harmed in any serious way by the reuse of a form that was either not culturally significant, or, alternatively, unrecognizable in its new context.

In order to be useful in differentiating cultural misappropriation from other kinds of cultural exchange, precise definitions of both significance and recognizability would need to be generally agreed upon. It would be necessary, for example, to define exactly which members of a culture should be used to test recognizability, and this could involve considerable debate over who is actually representative of a culture. Agreeing on a precise definition of cultural significance might be even more fraught, although here the various conservation disciplines could be of guidance. These already have established criteria for determining whether particular cultural artifacts are culturally important enough to be preserved, and extending these to other fields could help to establish an objective definition of cultural significance (Morratto and Kelly 1976; Lees and Noble 1990; Briuer and Mathers 1996). For the purposes of this article, however, I have used a working definition of cultural significance as: "having a generally shared meaning among, or being associated with identity by living members of a culture," and have taken recognizable to mean: "immediately recognizable as originating in their culture by non-expert members of that culture."

Methodology

The hypothesis of the study was that significance and recognizability might predict harm as a result of the reuse of forms or ideas across cultures, and hence act as a potential indicator of cultural misappropriation. As a means of testing these criteria, a range of cases illustrating four possible permutations was examined:

1. Neither Culturally Significant Nor Immediately Recognizable
2. Culturally Significant but Not Immediately Recognizable
3. Not Culturally Significant but Immediately Recognizable
4. Both Culturally Significant and Immediately Recognizable

Neither Culturally Significant Nor Immediately Recognizable

The Japanese Print and Western Painting

At the end of the 19th century, woodblock prints were not regarded as culturally significant by the Japanese art establishment (Fenollosa 1885). When their characteristic use of flat, undifferentiated planes of color were first incorporated into modernist paintings in Europe, moreover, it was Western rather than Japanese critics who first recognized them (Figure 2).[2] Based solely on cutural significance and recognizability alone, then, this particular reuse would not qualify as misappropriation.

[2] One of the first was Louis Gonse in "L'Art Japonais et son influence sur le gout Europeen. Revue des arts decoratifs," [Japanese Art and its Influence on the European Taste: Review of the Decorative Arts] 1898.

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Figure 1: "Comparison of Celebrated Beauties": Kitagawa Utamaro, 1797
Figure 2: "Le Divan Japonais," Toulouse-Lautrec, 1892
Sources: HDWEB[3]

The Stoa and Theater at Pergamon and Alvar Aalto's Library Plans

Separately, the forms of the theater and stoa were common in Hellenistic Greece, and it seems likely that their social implications would have been widely understood. The fusing of these two forms at Pergamon, however, was unusual, if not unique (Figure 3). As a result, this hybrid plan could not be claimed to be representative of Greek culture. When it was apparently reused two millennia later by the modern architect Alvar Aalto, moreover, not only had its purpose been altered, from a theater and shopping street to a library reading room and administrative offices, but the three-dimesional forms were also quite different, making it difficult to recognize immediately (Figure 4). Again, then, this reuse would not seem to meet either of the two criteria of cultural misappropriation being proposed.

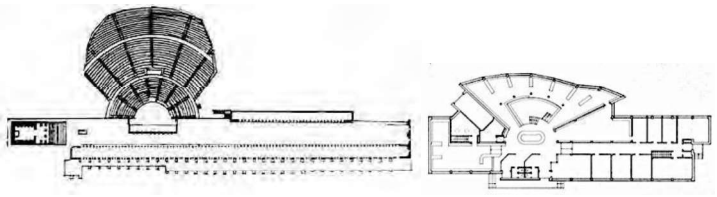


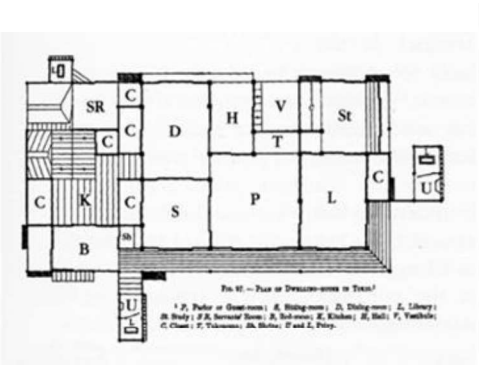
Figure 3: Hellenistic Theater and Stoa, Pergamon, Turkey, ca 300 BC
Figure 4: Public Library, Seinajoki, Finland, Alvar Aalto, 1965
Sources: www.picewe.com; wikiarquitectura.com

Edward Morse's Japanese House plan and Frank Lloyd Wright's "Life" House

The model home designed for *Life* magazine in 1938 by the American architect Frank Lloyd Wright appears to have been at least partially inspired by a Japanese house plan illustrated in Edward Morse's *Japanese Homes and Their Surroundings* ([1886] 1986). The parallel is most apparent if Morse's Japanese plan is compared with Wright's *Life* plan as it was eventually built in 1939 in the form of the Bernard Schwartz house (Figures 5 and 6) (Nute 1993, 1994).

[3] http://www.hdweb.design/utamaro-mirror.html; wikipedia.org

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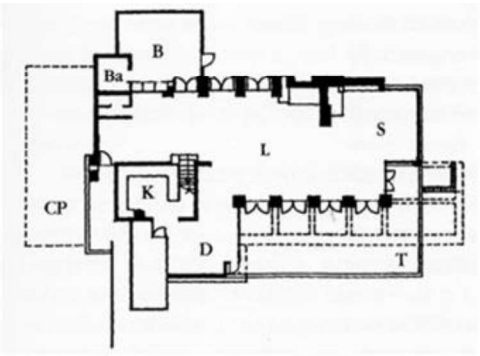


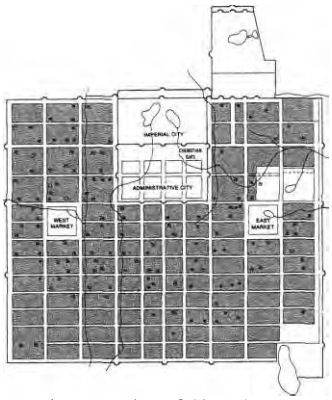
Figure 5: Japanese house plan illustrated in *Japanese Homes and Their Surroundings*, Edward Morse, 1886
Figure 6: Plan of the Bernard Schwartz House, Two Rivers, WI, USA, Frank Lloyd Wright, 1939
Sources: Morse 1886; Nute 1993

The Morse plan would probably not have been considered culturally representative in Japan, however, and although the Life House was seemingly based on an essentially similar overall plan, again it involved a major rearrangement of internal functions (Nute 1993). So the potential impact of the reuse of the Morse plan on Japanese cultural identity would probably have been negligible, and most Japanese would have been hard pressed to even recognize it as having originated in Japan. Again, this particular reuse would not appear to meet either of the two criteria of misappropriation being considered here.

Culturally Significant, but Not Immediately Recognizable

The Plans of Chang'an and Heijo-kyo

Guides to the city of Nara in Western Japan generally point out that the layout of Japan's first capital was based on the plan of the first capital of unified China, the Tang city of Chang'an, present-day Xian (Zhongshu 2001) (Figures 7 and 8).



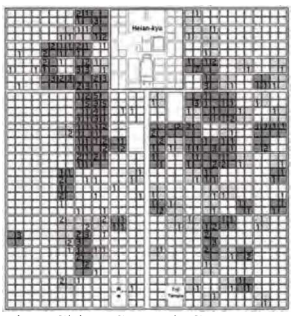


Figure 7: Plan of Chang'an, present-day Xian, China, Seventh Century
Figure 8: Plan of Heijo-kyo, present-day Nara, Japan, 710
Sources: https://cansunururek.wordpress.com; orjach.org

There is no question over the significance of the plan of Chang'an to Chinese culture. Without seeing the two city plans juxtaposed, however, even immediately after Heijo-kyo was built in the eighth century, it would have been very difficult for most non-experts to recognize Chang'an in its built reality. Three-dimensionally the two cities looked quite different. With the notable exception of its Buddhist temples, most of the building styles used in Heijo-kyo would

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probably have been strange to someone from China. In other words, this case would seem to meet one, but not both, of the proposed criteria for defining cultural misappropriation.

Chinese Characters and Japanese Kana

The Japanese *hiragana* and *katakana* syllabaries were invented during the early ninth century as phonetic versions of Chinese characters, mainly as a means of helping Japanese people to read Chinese and other loan words (Figure 9).

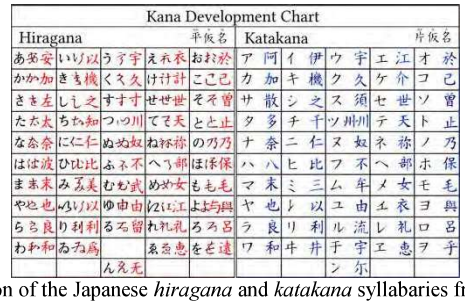


Figure 9: The derivation of the Japanese *hiragana* and *katakana* syllabaries from Chinese characters.
Source: https://en.wikipedia.org/wiki/Kana

The importance of its written script to Chinese culture is difficult to overstate. It was and remains a primary unifying element in China (Sin-wai 2016). In this regard, its reuse by another culture would certainly seem to meet the first criterion under consideration, cultural significance. However, the formal transformations involved in the translation of Chinese characters into Japanese *kana* were so extreme that most Chinese readers would have difficulty recognizing them. Again, this reuse would appear to meet only one of the two criteria of cultural misappropriation being considered.

The Plans of the Nikko Taiyo-byo and Frank Lloyd Wright's Unity Temple

The traditional *gongen*-style Japanese shrine consists of three distinct parts: the *honden*, a sanctuary reserved for a deity; the *haiden*, an oratory for worshippers; and a narrower intermediate space connecting the first two, which was originally a paved covered-way used by priests as they moved between the two main structures (Figure 10). There is circumstantial evidence that Frank Lloyd Wright saw the famous *gongen* style buildings at Nikko, a hundred miles north of Tokyo, on his first visit to Japan in 1905 (Tanigawa 1975), which may have influenced his plan for Unity Temple the following year (Figure 11) (Nute 1993).

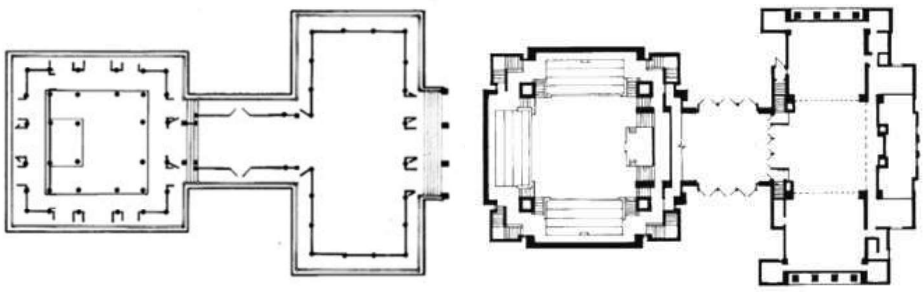


Figure 10: Plan of the Taiyu-in-byo, Nikko, Japan, 1653
Figure 11: Plan of Unity Temple, Oak Park, IL, USA, Frank Lloyd Wright, 1906
Source: Nute 1993

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Despite the similarity between the plans, however, the role of the central space was apparently significantly changed at Unity Temple, from separating a sanctuary and a prayer hall, to connecting a prayer hall and a school room via a shared entrance. Moreover, although the shrines at Nikko are famous throughout Japan and can certainly be considered culturally significant, it seems unlikely that many Japanese would recognize anything from their own culture in the external forms of Unity Temple (Figures 12 and 13).



Figure 12: External view of the Taiyu-in-byo, Nikko, Japan, 1653.
Figure 13: External view of Unity Temple, Oak Park, IL, USA, Frank Lloyd Wright, 1906.
Sources: Nute 1993; Oak Park Public Library

Not Culturally Significant, but Immediately Recognizable

The Replication of Scenes from Japanese Prints in Vincent Van Gogh's Paintings

This category of reuse involves forms that would not be described as culturally significant in their original context, but which would be readily recognized by members of their originating culture. The particular Japanese woodblock prints recreated in some of Vincent Van Gogh's early paintings, for example, would probably not have been considered representative of Japanese culture. In fact *ukiyo-e* of this kind were not treated as fine art in Japan until well into the twentith century (Fenollosa 1885), but the scenes would probably have been recognized by many Japanese people, especially given the fact that Van Gogh acknowledged their sources in the titles of these works, and even included Japanese text (Jansen, Luijen, and Bakker 2009) (Figures 14 and 15).



Figure 14: "Plum Orchard, Kameido," Ando Hiroshige, 1857.
Figure 15: "Flowering Plum Tree," Vincent Van Gogh, 1887.
Source: https://en.wikipedia.org/wiki/Japonaiserie_(Van_Gogh)

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The Use of Foreign Text as Form Independent of Meaning

In both the West and the Far East foreign text appears to have become a component of fashion over the last three decades. It is the forms of these scripts, rather than their content, however, that seems to be of primary interest in these reuses, and in many cases the meaning is either obscure or simply absent (Figures 16, 17).





Figure 16: Chinese text on a replica of a T-shirt worn by the American movie character Jayne Cobb, which translates as "fighting small elves."
Figure 17: English text on a T-shirt in Japan.
Sources: Amazon.com;[4] *https://mpora.com/travel*

While the individual Chinese characters and English words used in these examples clearly have significance in their original cultures, the particular combinations shown here do not. Despite the fact that are immediately recognizable by members of their original cultures, then, these borrowed phrases would not meet the first criteria of cultural misappropriation being proposed here: cultural significance.

Both Culturally Significant and Immediately Recognizable

Da Ming Palace and the Temple of Todai-ji

While most buildings in the eighth century imperial Japanese capital of Heijo-kyo would have borne little resemblance to those in China at the time, Buddhist temples were the exception since many had been directly based on Chinese models (Zhongshu 2001). The roof form of the Great Eastern temple of Todai-ji was unusual, however, having been inspired not by a Chinese temple, but rather by the Tang imperial palace in Chang'an (2001) (Figures 18 and 19).





Figure 18: Da Ming Palace, Chang'an, China, 635 (digital model)
Figure 19: Temple of Todai-ji, Heijo-kyo, Japan, 752 (physical model)
Sources: chinahighlights.com; Wikimedia Commons[5]

[4] https://www.amazon.com/Firefly-Jayne-Fighting-Replica-T-Shirt/dp/B004XMP4P2
[5] https://commons.wikimedia.org/wiki/Category:Models_of_Todai-ji

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Given both the cultural significance and immediate recognizability of the Chinese imperial palace, judged according to the two criteria being examined here, the reuse of the Da Ming Palace forms at Todai-ji would seem to meet both of the criteria of cultural misappropriation being proposed. China was the dominant regional power at the time, however, and would have seen itself as clearly the senior partner in this transfer of ideas to the still-developing nation of Japan. Such adoptions of Chinese forms would have constituted no real threat to Chinese identity or feelings, then, and this suggests that the criteria of cultural significance and recognizability alone may not be sufficient in themselves to determine whether harm is likely to be caused by the cross-cultural reuse of forms.

The Use of Western Official Regalia in Meiji Japan

As a message to his nation on the need to modernize, the newly reinstated Japanese emperor Meiji (1852–1912) was generally seen publicly in Western, rather than traditional Japanese official attire (Coleman 2016) (Figures 20 and 21). The emperor's military uniform would have been clearly understood as a sign of official rank by most Westerners at the time. In other words, it was both culturally significant and recognizable in the West. The adoption of Western regalia appears to meet both of the proposed criteria of cultural misappropriation, then, and there is some evidence that it made at least some in Europe feel uncomfortable, but whether it was ever really considered a threat to Western identity is a matter of debate (Krammer 2013). In its rush to catch up with the West technologically during the second half of the ninetheeth century, Japan was importing any and everything Western, which at the time was almost synonymous with "modern," and, much like China 1,200 years earlier, the West was generally a willing senior partner in these exchanges (Beasley 1995).





Figure 20: The Emperor Meiji in Formal Japanese Attire
Figure 21: The Emperor Meiji in Formal Western Attire
Source: the-dark-lens.blogspot.com

The Re-borrowing of Borrowed Scenery

The idea of incorporating distant scenery into the design of gardens originated in China, where it is known as *jièjǐng* (Itoh 1973) (Figure 22). The earliest confirmed examples in Japan, where this technique is known as *shakkei*, date from the seventheeth century (Figure 23).[6] The device was later used in the West, including by the Northwest modernist architect John B. Yeon (1910–1996) (Figure 24) (Nute 2010).

[6] Borrowed scenery is not mentioned in the oldest extant Japanese garden manual, the *Sakuteiki* (作庭記, "Records of Garden Making") dating from the twelfth century. See Teiji Itoh, 1973. *Space and Illusion in the Japanese Garden* 15–16. New York: Weatherhill.

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Figure 22: Garden of the Humble Administrator, Suzhou, China, 1509
Figure 23: Temple of Shoden-ji, Kyoto, Japan, 1615
Figure 24: Watzek House, Portland, OR, USA, John Yeon, 1937
Sources: Wikimedia Commons; Nute 2010; John Yeon Archives, courtesy of Richard Louis Brown

Borrowed scenery eventually became culturally significant in Japan as well as China, and is fairly easily recognized. On this basis, each of these transfers—from China to medieval Japan, and then from Japan to twentith century America—would seem to meet both of the criteria of cultural misappropriation being tested here. If the relative powers of the cultures involved at the time of these transfers is taken into consideration, however, only the second transfer, between Japan and the United States, would seem to have entailed any possible threat to the originating culture.

Japanese Objects in Western Painting

Following the reopening of Japan to the outside world in 1853, ceramics, woodblock prints, *kimonos*, and gilded screens were some of the most popular Japanese exports to Europe (Lambourne 2005). While these items may never have had quite the same cultural significance in Japan itself as they did as Japanese icons for Europeans, there is no doubt that they were, and to some extent remain, recognizable cultural symbols to most Japanese people. The reuse of these objects as subject matter in Western paintings during the second half of the nineteeth century, then, would seem to meet both of the proposed criteria of cultural misappropriation (Figure 25).



Figure 25: "Caprice in Purple and Gold: the Golden Screen," James Abbott McNeill Whistler, 1864.
Source: Wikimedia Commons[7]

[7] https://commons.wikimedia.org/wiki/File:James_McNeill_Whistler_-_Caprice_in_Purple_and_Gold-_The_Golden_Screen_-_Google_Art_Project.jpg

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Western Repurposing of the South Asian Swastika

As mentioned earlier, the swastika was an ancient religious icon found throughout Eurasia, and is still a symbol of divinity and well-being in Indian religions in particular. During the early twentieth century it was also in widespread use in the West as a sign of good fortune, on everything from commercial products to military insignia (Figures 26–32).[8]



Figure 26: Hindu svastika (India). Figure 27: Jain svastika (India). Figure 28: Buddhist *manji* (Japan).
Figure 29: Examples of 19th Century European and American commercial use of the swastika.
Sources: wikipedia.org; www.lionsroar.com; hafsite.org



Figure 30 and 31: Pre-WWII US and Finnish Aircraft Insignia. Figure 32: The Nazi Hakenkreuz.
Sources: Steven Heller;[9] Hugo Jaeger, LIFE archives

As a religious symbol, the swastika clearly had significance in its orginal cultural context in Asia, and it was easily recognized in the various new contexts in which it was reused. The purpose of those new uses varied from banal monetary gain to fascist nationalism, but under the limited criteria of significance and recognizability, all of these examples would be categorized equally as misappropriation. More recent uses of Asian religious symbols to sell commercial products in the West would similarly qualify as likely to cause offense by debasing culturally significant symbols (Figures 33 and 34).[10]

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[8] See Mukti Jain Campion, "How the World Loved the Swastika—Until Hitler Stole It," *BBC Magazine*, October 2014: https://www.bbc.com/news/magazine-29644591
[9] https://www.wehrmacht.es/en/blog/news/the-swastika-in-finnish-military-aviation
[10] See "Brewery Apologies After Use of Hindu Symbol on Beer Bottle Sparks Protest," *The Telegraph*, December 28, 2018: https://www.telegraph.co.uk/news/2018/12/28/brewery-apologies-use-hindu-symbol-beer-bottle-sparks-protest/ Examples of similar appropriations of Buddhist symbols are discussed in Nalini Bhushan and Abraham Zablocki, "TransBuddhism: Authenticity in the Context of Transformation," in Nalini Bhushan, Jay L. Garfield, Abraham Zablocki, eds. 2009. *TransBuddhism: Transmission, Translation, Transformation,* 1–18, Amherst, MA: University of Massachusetts Press.



Figure 33 and 34: Recent examples of the Western use of Buddhist and Hindu graphic symbols to sell commercial products.
Sources: zenorganics.com; Chesire Brewhouse[11]

The Personal Copyrighting of Cultural Forms

The final case study is included because it involves a direct clash between cultural and private property rights. In 2002, Victor Whitmill designed a face tattoo for the former heavyweight boxer Mike Tyson, which was apparently inspired by traditional Maori tribal forms (Fleischer 2011) (Figures 35 and 36). Since the forms involved are significant in Maori society, and were also immediately recognized by many members of that culture, the Tyson tattoo would seem to meet both of the criteria of cultural misappropriation being discussed here (New Zealand Herald 2011).



Figure 35: Traditional forms used in Maori tribal tattoos. Figure 36: Tattoo apparently based on traditional Maori forms designed for Mike Tyson by S. Victor Whitmill in 2002. Figure 37: Parody of the Tyson tattoo used in the movie *The Hangover*, Warner Brothers, 2009. Figure 38: A transfer replica of the Tyson tattoo available online.
Sources: http://alohamisschun.weebly.com; tattoostime.com; Warner Brothers/Planet Photos; TVSTORE[12]

Seven years later, however, the Tyson tattoo was parodied in the Hollywood movie *The Hangover* (Figure 37). The tattoo designer successfully sued the distributors of the film based on the claim that they had infringed his copyright on the tattoo design (Clark 2011).[13] By the time it was reused in the movie, the Tyson face tattoo had arguably become a popular cultural icon in its own right, and it was clearly intended to be recognized as such in the movie. So this was essentially one aspect of American popular culture quoting another. More significantly, however, it was a second appropriation of what were originally Maori tribal forms by a dominant culture, and its defacto privatization by a non-Maori individual only seems to have added further insult to that original injury.

The Tyson tattoo case highlights the inequitable treatment of individuals and cultural groups under current copyright laws, and is made all the more ironic by the fact that one can now buy

[11] https://www.cheshirebrewhouse.co.uk/products/govinda-organic-plumage-archer.
[12] https://www.tvstoreonline.com/temporary-tattoo-as-seen-on-mike-tyson/?gclid=EAIaIQobChMIuqmT9ZK95QIVUCCtBh3PKwjcEAQYAiABEgIJ4vD_BwE.
[13] The case was settled out of court when Warner Bothers agreed to pay Whitmill undisclosed damages.

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transfer replicas of the Tyson tattoo online (Figure 38). The notion that one can assume private ownership of forms that were originally derived without permission from a different culture would seem to suggest that, at the very least, there may be a need for the law to recognize the intellectual rights of cultural groups on an equal basis with those of individual artists.[14]

Conclusion

The principal finding of the study was that several seemingly innocuous reuses of forms derived from dominant cultures ended up being categorized as misappropriation, together with some of the most egregious examples, in which a dominant culture not only took culturally significant forms from less powerful ones, but also debased their meaning in the process. This leads to the conclusion that not all cases of culturally significant forms being recognizably reused by a different culture necessarily harm the original culture. When that culture is dominant, its identity and that of its members is unlikely to be seriously harmed by the adoption of its forms by others. Indeed, at the moment it seems much more likely to be the other way around, as indigenous cultures are often undermined by their adoption of elements of global popular culture.

In order to get closer to a reliable test of cultural harm, and hence of misappropriation, it would seem that an additional criterion, taking into account the relative power of the cultures involved, would be necessary. This would result in a somewhat different categorization of the case studies examined, in which some instances where the originating culture was the dominant partner, such as the Japanese adoption of Chinese forms from the eighth to the twelfth century, as well as its importing of Western regalia in the nineteenth century, would not be classified as misappropriation (Figure 39).

These three criteria, cultural significance, recognizability, and relative power, may themselves ultimately prove insufficient as indicators of potential cultural harm, but it seems likely that they would form part of any such test. The precise meanings of cultural significance, recognizability, and dominant culture remain to be agreed, however, and until they are it seems unlikely that there can be any generally accepted definition of cultural misappropriation.

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[14] The legal ramifications of the case are discussed by Aaron Glass in "Legal Ta Moko-Over: Māori Tattooing, Copyright, and *The Hangover 2*." *Material Word: A Global Hub for Thinking about Thing*s, July 13, 2011: https://www.materialworldblog.com/2011/07/legal-ta-moko-over-maori-tattooing-copyright-and-the-hangover-2.

		Culturally Significant in Original Context	Recognizable in New Context	Reused by a Dominant Culture
Japanese Woodblock Print Graphics	European Painting	✗	✗	✓
Pergamon Theater and Stoa	Aalto Library Plans	✗	✗	✓
Morse Japanese House Plan	Wright Life House Plan	✗	✗	✓
Plan of Chang'an	Plan of Heijo-kyo	✓	✗	✗
Chinese Written Characters	Japanese *kana*	✓	✗	✗
Nikko Taiyu-in Plan	Wright Unity Temple Plan	✓	✗	✓
Japanese Woodblock Print Scenes	Van Gogh Paintings	✗	✓	✓
Chinese Text	Western Fashion	✗	✓	✓
English Text	Asian Fashion	✗	✓	✗
Da Ming Palace	Temple of Todai-ji	✓	✓	✗
Western Imperial Regalia	Meiji Japan	✓	✓	✗
Chinese Borrowed Scenery	Japanese Gardens	✓	✓	✗
Japanese Borrowed Scenery	Yeon Watzek House	✓	✓	✓
Japanese Objects	Western Painting	✓	✓	✓
South Asian Swastika	Western Military Insignia	✓	✓	✓
South Asian Swastika	Nazi Hakenkreuz	✓	✓	✓
South Asian Swastika	Western Advertising	✓	✓	✓
Zen and Om Symbols	Western Advertising	✓	✓	✓
Maori Tribal Tattoos	Tyson Tattoo	✓	✓	✓

Figure 39: Summary of the case studies according to all three criteria examined. Those highlighted in black would be classified as potentially harmful to the originating culture, and hence as misappropriation.
Source: Nute

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