

## *Introduction*

### **Situating Indigenous Arts and the Politics of Possession**

*Tressa Berman*

In the cover painting, *No Deal!*, from which this book takes its name, Mbarbaram artist Jennifer Herd presents a bleeding map of Australia superimposed upon a declaration of land rights to Aboriginal homelands. The image is meant to highlight the fact that Native title, as a legal claim, was built upon the legal fiction of *terra nullius*, meaning “land belonging to no one.” This idea has a parallel construction in North America, where Canada’s French settlers described it as *terre inconnu* (unknown land). In the United States of the nineteenth century, the doctrine of discovery likewise served as a justification for granting national authority over Indigenous lands,<sup>1</sup> while at the same time deeming them as previously unoccupied prior to the succession of European landings.<sup>2</sup>

Why does a volume on Indigenous art concern itself with the history of colonizing policies in the two settler continents examined here, Australia and North America? In effect, the two aspects of the book’s subtitle—“Indigenous arts” and the “politics of possession”—are inextricably joined by the shared acts of taking by which the first colonizers wrested Indigenous lands away from Indigenous peoples, first by force of occupation, and then by laws that sanctioned European settlement. Western property law, as an arm of that colonizing control, served initially as a regulating force of possession, defining the terms and social arrangements of ownership and its rights to place. Legal proscriptions even governed expressions of cultural identity itself by suppressing Indigenous ritual practices, family formations, and languages. Specifically, British common law, upon which both Australian and US law are founded, enabled the first acts of conversion from “land” to “property” and its various forms of ownership. These formations are expressed in Native art as

both visual and expository representations, on the one hand, and as dynamic aesthetic forms of cultural accommodation, resistance, and reinventions on the other. From an anthropological perspective, the “regimes of property” (Myers 2001) that have shaped settler-Indigenous relations over time create tensions between certain artistic values and Indigenous symbol systems (including kinship, property arrangements, and the creative process), at once at odds with western values of possessive individualism, primogeniture, private ownership of land, and commodified exchange. The chapters in this volume speak to these tensions from both historical and contemporary perspectives, and in doing so they also consider creative forms of engagement with the global art market, and how Indigenous artists position their work within it as an expressive tool of cultural identity and revitalization.

The case studies presented here are positioned within the context of Indigenous sovereignty movements since the 1970s, which have shaped new dialogues in the exhibitionary agenda between museum-based and activist curators, and Indigenous artists and their communities of belonging. Amid these creative tensions, a new playing field has emerged that disrupts the expectations of dichotomous categories and ways of thinking (Indigenous/non-Indigenous, traditional/contemporary) through acts of reclaiming and self-naming. Speaking directly to the shattering of expected views about Native American art, Paul Chaat Smith writes: “The United States and most other countries are places without an Indian history and the constructed amnesia turns the ground beneath our feet into quicksand.... Authenticity. Place. Memory. All are at the very core of today’s conceptual artists who choose to venture far from the safe confines of neo-traditional contemporary art production” (2009:89).

Related to the recall of place and memory, Salish-Kootenai artist Jaune Quick-to-See Smith visually remaps this historical amnesia through a reimagining of Native homelands that visually speaks to Native artists’ impulses to take back, rename, and reclaim Native spaces (plate 1). In this way, Quick-to-See Smith’s painting is in visual conversation with Herd’s mapping of Australia by delineating the complex contours of Indigenous diversity that underlie the surface lines of redrawn terrains. In both paintings, the artists reterritorialize the land by making the invisible visible as they retrace historical imprints of ancestral routes. This remapping in the form of Herd’s and Quick-to-See Smith’s work highlights two main purposes of this book: to explore the ongoing effects of colonization on Indigenous art in two settler continents (North America and Australia); and to show, from various standpoints of art production and circulation, the proactive ways that Indigenous artists redefine these postcolonial relations of possession. These effects are the result of the push-back of Native artists in the context of art historical

canons that exclude, label, or otherwise misappropriate them (cf. Berman and Mithlo 2011).

The taking of land was the first act of dispossession. It is through the history of “possession” that Indigenous artists forge new social relations, redirecting attention toward historical sources of expropriation and creating new acts of reappropriation. Artistic interventions thereby symbolize and activate the reshaping of power relations between colonized and colonizer (Ziff and Rao 1997).

The standard academic protocol to position one’s work within a body of existing scholarship allows a consideration of theory building in art and possession as unitary categories of coexistence. Important guideposts in thinking through these categories together are Nicholas Thomas’s *Possessions* and Fred Myers’s *Painting Culture*, though both of these critical examinations focus on the settler continents of New Zealand and Australia. For North America, Michael Brown (2003) has located the question of ownership in Native contexts, though his is not a focused consideration of art, and Mary Riley’s volume *Indigenous Intellectual Property Rights* (2004) saw only a small circulation within that specialized area of study (cf. Greaves 1994; B. Hoffman 2006). Yet, Indigenous intellectual property rights (IPR) remain an active corner of the market, so to speak. Stated in market terms, IPR exists as an arm of property law and thereby serves as a regulating aspect of property relations. The wider kinds of relations that govern possession are not always legally defined, nor are they easily captured, since they exist in the murkily defined and overlapping spheres of social relationships—Chaat Smith’s “quicksand” of theorizing Indigenous art in the contexts of political power and public reception.

The case studies in this book highlight some of these dilemmas, which have their basis in multiple dimensions of possession, including but not limited to the “legality of possession,” which governs the property relations that get tested through copyright litigation, Indigenous trademark movements, and international agreements (e.g., the UNESCO declarations that have no binding power). Beyond legal codes and social sanctions, the authors also meet at the crossroads of Indigenous art and contemporary art, considering their historical constructions apart from one another, yet intersecting. Until recently, these units of study—Indigenous art and contemporary art—were treated as separate aspects of art history, such as in the self-conscious appropriations of the 1980s avant-garde (Evans 2009) and the unconscious takings of Native art forms by non-Native artists (Rushing 1994; R. Butler 1996). James Young, in *Cultural Appropriation and the Arts* (2010), expanded the frame by considering the various arguments that define appropriative intentions and reactions, such as what he dubs the “cultural experience argument,” which touches on standpoint as a valid category of assessment, accounting

for who is speaking and from what points of view. His arguments nonetheless support the understanding that appropriation is an elastic category of comminglings and adverse possessions (i.e., theft), as outlined by Berman and Centin's reflections on the "Cultural Copy" exhibition (2004, and this volume). While this volume is not an attempt to fix the problems of gaps and uneven approaches in the literature, it is a conscious attempt to engage with Indigenous methodologies, critique standardized ways of knowing, and in doing so, reframe the discourse on Indigenous art from both historical and transnational perspectives.

By addressing various dimensions of relations of possession, the contributors to this volume consider how art forms become marked as they move from their sites of production (communities, studios) to their sites of display (galleries, museums, the global art market), and thereby enable us to trace their circulation through a web of relationships and aesthetic values. These relational aspects of art making and circulation are mirrored in the three main sections of this book, while the chapters provide us with a set of case studies that can be used as building blocks toward rethinking an Indigenous art history. In this way, the selections here provide a basis upon which to conceptualize a historical narrative of the issues, similar to the ways in which case law in legal studies relies on both precedent and interpretive consensus. In the art world, the "consensus" has shifted from an expectation that Indigenous art (however variously defined) will go beyond postcolonial responses ("identity art") to an active engagement with its structures of power, access, and visibility. This sometimes lands us in contradictory places.

But the contradictions—such as using the legal system to overturn erroneous laws of the land—can at times lead to their transformation. In Australia, the doctrine of *terra nullius* was repealed in the 1992 landmark case of *Mabo v. Queensland*, which established certain Indigenous rights to specified land claims and set the stage for the flow of property rights litigation that continues to shape debates about culture, property, and possession in Australia today.<sup>3</sup> Much like US Indian law, which governs a wide range of creative capital (e.g., the necessity and unevenness of the Native American Graves Protection and Repatriation Act of 1990), the results are not always upheld, nor are they supple enough to provide full recognition to Native artists as authors of their own symbolic heritage, or as "owners" of the cultural knowledge from which it stems. The debates find form in artistic expression, and it is Indigenous artists themselves who are at the vanguard of claims surrounding such questions of "authorship" and "ownership"—concepts that grate against the grain of collective practices. These are but some of the built-in contradictions in how Indigenous art gets written about and conveyed.

In the work of Indigenous artists, a place-based aesthetic is the language

by which they incorporate both visible and invisible traces of history as aspects of strategic design (Berman and Mithlo 2011). Strategies include the relationships that artists form through art making and that thereby inform it at family and community levels and at their political points of intersection.

The contributors to this volume—artists, curators, art historians, and anthropologists—speak from the perspectives of Indigenous systems of knowledge as well as from western epistemologies and their institutions. While looking through the lens of art and its associated rights to production, performance, and imagination, they ask: what does it mean to own culture?

This book brings together key selections from more than two decades of ethnographic and curatorial output that has formed a basis upon which to build a critical Indigenous art history. It is also a visually based conversation across two continents that bridges Indigenous acts of border crossing with a critique of the appropriative risks inherent in the global circulation of art. In this respect, this volume can be used as a foundational text that enables readers to see the scope of interrelated issues as they have developed over time. The authors write across disciplines, asking ongoing, yet unanswered questions—Who owns culture? Who owns the past?—while centering the debates on the field of contemporary Indigenous art and communities. This focus is one of the ways in which this book is differentiated from other collections to date. In Australia, Rex Butler's *What Is Appropriation?* came close to the aims of this volume by situating Indigenous art in the larger context of art market effects. That collection and its renowned contributors came on the scene at the peak of the 1990s reconciliation movement in Australia, and followed from landmark legal cases that established Aboriginal artists' rights with respect to infringement, compensation, and cultural harm.<sup>4</sup> Through these legal victories, Indigenous artists have moved the law forward for *all* artists concerned with the unauthorized reproduction of their work, publicity rights, just compensation, and the proliferation of production in the digital age.

In the United States, the 1990s saw equally precedent-setting legislation, with the enactment of the Native American Graves Protection and Repatriation Act (NAGPRA); amendments to the American Indian Religious Freedom Act (AIRFA); and the Indian Arts and Crafts Act of 1990, amending the original act, which has governed Native craft production and authentication since the 1930s. Beyond the law, the inextricable relationships of land rights, cultural rights, and art rights in Indigenous Australia and Native North America call into question the persistence of colonial regimes of possession that take private property as their launch point for asserting evaluative and proprietary claims (N. Thomas 1999). The counter-assertion suggested by Herd's painting *No Deal!* is the artist's own claim to self-representation as part of a collective voice of "ownership" expressed through art making. Following from Herd's visual

statement, this book compiles a diverse group of voices from Australia and North America in order to investigate social relations of possession through the artifacts, motifs, and artistic processes of expressive culture. As former colonial subjects reassigned to internal colonial slots of place and identity codified by western law (e.g., “American Indian” as a legally defined term), Indigenous artists work in the border zones of art and the law, communities and museums, while staking cultural claims to knowledge and power—especially where the latter is vested in dominant legal codes of interpretation and their social consequences.

The concept of “possession” is a malleable one that takes on context-specific meanings and inter-activities, from settler acts of borrowing and theft, through modernist appropriations and re-significations in western art worlds, to contemporary hybrid practices and controversies that link questions of public domain with rights to knowledge. Contributors to this volume are therefore concerned with how to link contemporary art forms with a broad set of rights that have resulted from external and ongoing internal colonial relations in North America and Australia. The authors also go beyond the language of rights to explore more deeply nuanced forms of cultural and artistic expressions and assertions of individual, collective, and public identities. For example, some contributors examine the cultural appropriation of images, motifs, and identities as aspects of intellectual property, yet go beyond applications of IPR, which they view as limited. They examine extralegal cultural rights and sanctions extended to production, display, circulation, and restitution, in relation to Indigenous art practices and their culturally specified meanings and social relations.

By conceptualizing art practices in relationship to cultural meanings and aesthetic engagements, western legal concepts of property and their underlying assumptions about ownership and “possessive individualism” are revealed and challenged.<sup>5</sup> The limitations of western property regimes force a re-theorizing of cultural and intellectual property applications in the context of a living art history. It is these complex cultural histories that give this volume its comparative value both as a compendium of case studies that traverse and connect the settler continents of North America and Australia, and as a multidisciplinary investigation into the very constructs of indigeneity itself, especially through its artistic and public forms of (re)presentation.

From the standpoints of Indigenous artists, the making and reshaping of identity demands a new discourse in relation to the art market, commercial production, and the laws of trade and property rights that regulate identity. “Native American,” “American Indian,” “Aboriginal,” “First Nations,” and the more culturally specific assertions of self-naming (e.g., Ganalbingu and Diné as language names) collide with the cultural turn in art theory, and result in

their misapprehension—relegated to the margins of theory building or to the halls of aesthetic pleasure (cf. Henderson and Kaepler 1997).

The literature to date has sparsely engaged contemporary Indigenous art practices as integral to the overarching relationships of censorship and invisibility, which are two sides of the same coin in the currency of critical cultural studies (e.g., Atkins and Mintcheva 2006). The contributors to this volume critically examine what constitutes art, ownership, and identity in Indigenous contexts, especially as these dimensions intersect in the global marketplace of art and culture. Furthermore, various community sites of connoisseurship are presented here as artists reappropriate artistic and cultural symbols and call for a reexamination of the systems of value in which ideas and objects flow.<sup>6</sup> Several authors explore shifts in value and meaning, as artworks—and the discourses about them—are reconsidered in relation to their placement. The re-employment of works of art and visual imagery creates new sets of meanings and also challenges the very structures and sites of production and display—from community gatherings and museums to commercial imprints and the global circulation and reception of Indigenous artists and their works.

## Structure of the Book

This book is divided into three sections: “Aesthetics and Meanings,” “Possession and Identity,” and “Public Reception.” This topical approach brings the main themes into focus, while recognizing the ways in which they intersect. In this way, the shared concerns that span North America and Australia become more apparent. These appearances show up as effects of colonial interactions—variously violent, paternalistic, and controlling. Furthermore, the boundaries that circumscribe nation-states (United States, Canada, Australia) and their “nations within” (reservations, reserves, title lands) define the parameters of more than two hundred years of legal theorizing and the reworking of British common law into a newly constructed internal colonial rule of law that continues to shape cultural policy in both Australia and North America.<sup>7</sup> From land rights to cultural rights, the case studies in this volume point directly to the ways in which western institutions and legal structures produce varying and uneven results for cultural restitution. Moreover, by analyzing the culturally and politically generated meanings that inhere in objects and images presented in the public space, the contributors to this volume show the *limits* of the law in developing a fully constituted system for converting cultural symbols to property.

The majority of the case studies presented here are based on original research from artistic, curatorial, and anthropological points of view. In part 1,



“Aesthetics and Meanings,” the authors consider works of art and their situated meanings and values as they travel from sites of production to sites of display, such as the meanings produced in the curatorial process of carving, selecting, and displaying Inuit art (Bouchard). In some cases, the very medium for portraying identity, such as photography or writing, raises important questions that go beyond representation by examining mainstream media sources, such as the Internet and advertising (Parezo and McChesney, respectively). By extension, Biddle’s examination considers Australian Aboriginal women’s paintings as an aspect of literacy that deploys Indigenous symbol systems of language and power.

Part 2, “Possession and Identity,” delves more specifically into certain community-based and extralegal characteristics that inform cultural rights to creative forms of expression. Michaels’s groundbreaking work with Aboriginal communities and media technologies remains foundational to an exploration of collective identity and community control. M’Closkey tackles issues of tribal control over collectively owned designs and their commercial circulation through her detailed account of the Navajo rug trade and its knock-off market. Together, these perspectives contribute to a broadened view of ownership and reparations for legal and cultural infringements, including dimensions of cultural harm. Notions of “harm” have historically been linked to authority resting with military, religious, and political institutions. In an attempt to reverse this institutional authority, Native cultural organizations increasingly assert control over Native identity by combining western economic models with expressions of cultural sovereignty. These contradictions extend into cultural heritage, where “Native art” stands in for “Native people” as a symbolic assertion of the formerly colonized. The ineffectiveness of property law to untangle the deep-seated relationships between land rights and art rights in Indigenous knowledge systems calls us to think “beyond the law” and reexamine what it means to “sign on” to cultural agreements, as Berman discusses for both Australia and North America. Taken as a whole, these strategies of resistance and creation activate new kinds of Indigenous control over art forms and their interpretations.

The gathering point for public debate on these issues is in the public space itself. In part 3, “Public Reception” is considered within broader contexts of the public sphere, which include multiple groups’ interests. Public spaces can be institutionally enclosed, such as a museum (Myers), or situated within the public realm of ideas known as the “public domain” (Fricke). In examining these two forms of exhibiting Indigenous art, the authors point to the possessive relations of museums (guardians of a loosely defined “public” trust), on the one hand, and the public space, on the other, which, as Fricke shows, calls into question a particular way that the public space of universities is itself



institutionally determined. Galleries, festivals, and other forms of public display allow artists to self-select for public events such as exhibitions (Berman and Centin), while guarding against handing over authority and control of Indigenous artworks to the market machinery of the international art world (Mithlo). In the realm of public access to art, critical questions emerge about ownership (of ideas and objects), and the possessiveness that defines aspects of the collecting, exhibiting, and making of Indigenous arts.

## Notes

1. The 1820s–1830s landmark Marshall Trilogy, named for Supreme Court chief justice John Marshall, were decisions that laid the foundation for federal Indian law in the United States by establishing “quasi-sovereign” status for federally recognized treaty tribes in the United States. The well-analyzed cases were an attempt by the court to strengthen federal laws over states, by revoking their jurisdiction over treaty tribes, while granting those tribes certain jurisdictional rights to self-governance within the borders of reservation lands. For an introduction to these issues, see Deloria and Lytle 1984.

2. In North America, these landings included British, Spanish, and French colonizing movements, which historically resulted in uneven legal and settlement patterns among nation-states, and between states and provinces. For example, the California rancheria system is a result of the lack of treaty relations in California following from the US-Mexican war in 1846–1848. Elsewhere in the United States, the French cession of lands through the Louisiana Purchase of 1803 resulted in the imposition of US constitutional law and the federal Indian laws that governed US territories, based on British common law in the United States. Provincial jurisdictions in Canada’s Quebec Province to this day retain aspects of Napoleonic law in their civic code. These comparisons lie far outside the scope of this volume, but point to the ways in which settler continents of North America and Australia are not identically “settled” with respect to the legal institutions that oversee Indigenous claims.

3. *Mabo and Others v. Queensland (2)* asserted that the Meriam people were entitled to the Murray Islands “as owners; as possessors; as occupiers; or as persons entitled to use and enjoy the said islands.”

4. See Martin Hardie 1998. Prior to *Bulun Bulun*, Terri Janke notes: “In 1993, imported carpets reproducing copyright works of Indigenous artists were found to be infringements of each Indigenous artist’s works. The artistic works embodied pre-existing cultural clan images that were, in some instances, altered by the carpet manufacturer, thereby distorting the cultural message of the works. The artists instituted a copyright action against the company which imported the carpets, Indofurn Pty Ltd, successfully winning their case” (2003).

5. See Locke (qtd. in Macpherson 1968); and for work that investigates the assumptions of possessive individualism vis-à-vis collective claims to cultural and intellectual property, see Berman 1997, 2004a.

6. For an example, see Berman 2011.

7. See Deloria and Lytle 1984 for a historical account of internal colonial legal structures in federal Indian law; for an account of Australian Aboriginal law after *Mabo*, see Reynolds 1992. See also the 2007 Northern Territory Emergency Response Act (Northern Territory intervention) and associated critiques.