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# Closing the Gap: Ethics and the Law in the Exhibition of Contemporary Native Art

*Tahnee M. Ahtoneharjo-Growingthunder*

When working with Indigenous communities, museum associations and the professionals they represent need to observe not only cultural protocols, but the law. The incorporation of American Indian art into non-Native institutions, in particular those that do not have experience working with Native communities, must be grounded in ethical practices that are defined by source communities.

Two recent developments have converged to create a volatile situation for American Indian inclusion in museums. The general lack of funding for arts and humanities has prompted museums to search for additional resources, especially geared to diversity. This financial need has resulted in many cultural institutions directing their efforts to an increased inclusion of American Indian communities and their cultural heritage. These efforts toward inclusion, however, are often misguided in that the selection of artists, experts, and consultants does not accurately reflect how our communities are constituted. The challenge of decreased annual funding for the arts has made American Indian art a convenient target for simply uninformed or even unscrupulous individuals and organizations that do not expend the time or energy to adequately research and select representatives whose claims to represent their communities are legitimate. In fact, the arts are particularly susceptible to individuals who falsify their

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cultural credentials in an effort to be selected for coveted opportunities to perform, exhibit, or guide American Indian arts. Museum curators have discovered pockets of funding within grants intended for American Indian cultural representation and to generate new research in American Indian art. Many museum grants under the Institute of Museum and Library Services (IMLS) and the National Endowment for the Arts (NEA), for example, specify opportunities specifically for American Indian object conservation, NAGPRA, and language preservation. While there are benefits in these grants for tribal museums, unaccredited museums, and independent scholars, liabilities exist. These grants often fund non-Native artists and those not recognized under the Indian Arts and Crafts Act of 1990, resulting in a violation of the law and its intent to guard against appropriation and fraud.<sup>1</sup> This volatile situation deserves discussion and proactive professional practice, not denial.

### CASE STUDY: *JIMMIE DURHAM: AT THE CENTER OF THE WORLD*

In 2017, the UCLA Hammer Museum in Los Angeles, California, came under public scrutiny for its retrospective exhibition of Jimmie Durham, an English-American artist living in Germany. According to an NEA grant report, the Hammer Museum received over \$55,000 in grants to curate the art of Durham, who has long been known to falsify his identity as a Cherokee person. For over thirty years, Native communities have recognized that Durham is a non-Cherokee person who masquerades as Cherokee, yet non-Native museums—especially the art institutions that hosted his major retrospective exhibit—ignored or tried to dispute these charges and proceeded to represent Durham as Native. In the *Cherokee Phoenix*, Roy Boney Jr., an artist and Cherokee Nation Language program manager, wrote that, “Durham might be one of the most prominent examples of an artist making false Cherokee claims to further a career.”<sup>2</sup>

What are the consequences? Whose responsibility is it to expose this ill-founded scholarship? Ideally, to articulate the consequences of misattribution to the public should be the responsibility of the professional organizations that guide museum ethics and standards. However, the lack of concern afforded to American Indian arts is evidenced by the lack of institutional and professional response to Native communities that objected to the framing of the Durham exhibit. By ignoring the requests of sovereign Native nations to stop the portrayal of Durham as Cherokee, instead of supporting our field, professional organizations have actively delegitimized it. The Indigenous Peoples Network of the American Association of Museums (AAM) has a mission to “increase communication, collaboration, and the diffusion of information among museum professionals on issues related to Indigenous peoples and museums” and “support Indigenous peoples working in museums and museums working with Indigenous peoples.”<sup>3</sup> Despite this goal, the association has failed to address the issue of fraud in American Indian arts. This organizational reluctance has hindered the ability of American Indian museum professionals to confront effectively a central challenge to the health and resiliency of our profession.

Although the Hammer Museum is not accredited by the American Alliance of Museums, other museums that showed the traveling retrospective *Jimmie Durham: At the Center of the World*, including The Walker Art Center and the Whitney Museum of American Art, could face probation from the AAM should they be found to be liable for willful misrepresentation. At the time of this writing, these museums were under review for sharing inaccurate information about Durham while actively receiving grants earmarked for Native American and underrepresented communities. However, at the time of publication, AAM does not seem to have taken any action. Those who assess grant applications—not only museum staff, but individuals across a spectrum of backgrounds—are all responsible for the accurate representation of artists as Native. When the grant stipulates eligibility as an American Indian artist, without a clear understanding of tribal enrollment policies, their awards to applicants may be fraudulent. National leaders (both granting agencies such as the NEA and the museums that are applicants for funding) are responsible for enforcing policies mandated under their mission, including eligibility.

The senior curator Anne Ellegood, and the Hammer Museum leadership responsible for the exhibit *At the Center of the World*, promoted false information in the exhibit catalogue, exhibition didactic text, and promotional materials. Ellegood additionally failed to address the Indian Arts and Crafts Act that prohibits misrepresentation of identity. Ellegood's celebration of Durham's work strained the boundaries of the American museum community's ethics and best practices. Although few comment upon this erosion of public trust, in determining how to address the impacts of the Durham exhibit, it is the crucial variable.

Ellegood has been quoted as stating that the laws about American Indian identity are confusing, leading the museum public to believe that American Indian laws and culture are not worth the investment to learn about.<sup>4</sup> This is a terrible platform for an individual whose employment is premised on serving as an educator. Becoming familiar with the laws that govern American Indian lives is a part of the effort that museums and their constituents must make if they are to truly partner with Native communities.

## THE INDIAN ARTS AND CRAFTS ACT OF 1990

The Indian Arts and Crafts Act of 1990 (IACA) is a truth-in-advertising law prohibiting misrepresentation in the marketing of American Indian or Alaska Native arts and crafts products within the United States.<sup>5</sup> Under the IACA, work cannot be sold, marketed, or promoted as American Indian unless the artist is enrolled or recognized by a tribal entity. To be federally recognized, one must possess American Indian enrollment into one of the 574 federally recognized tribes, with proof of identification such as a citizenship card of status.<sup>6</sup> American museums are required to follow the IACA.

While many may ask, "What about those Native individuals who are recognized by their tribes as members of the community, as belonging to the community, but for various reasons cannot get documentation," it is important to note that no one can "elect" to be American Indian without documentation of their specific tribe. Rights

of Indian citizenship are not unlike rights to any foreign nation: just as one cannot imagine that they are a French citizen, one cannot imagine that they are a Cherokee citizen. This belonging requires a legal status conferred by documentation.

The IACA was formulated over two decades by a panel of Native artists serving as advisors. In various community gatherings across Indian country between 1971 and 1991, this panel provided testimony about the realities of art shows in which fraudulent artists were benefiting economically by posing as American Indians. Substantial support from the National Congress of the American Indians aided the process of drafting and passing this legislation. In *The Arbitrary Indian: The Indian Arts and Crafts Act of 1990*, Gail K. Sheffield notes early efforts that led to the IACA were in response to “trade in counterfeit Native American handicrafts that were being exported to the United States by foreign countries such as the Philippines and China and sold as authentic.”<sup>7</sup> The Government Accountability Office (GAO) provided records of violations in 2011, documenting instances of the act being implemented against fraud. It is difficult to know the extent of this misrepresentation because, as the GAO concluded, “there are no national data sources containing the information necessary to make reliable estimates.”<sup>8</sup> Several high-profile violations have been reported in the press more recently.<sup>9</sup>

Status as an American Indian is important to tribes because of the loss of land, language, and culture that tribes suffered under American imperialist assimilation efforts, which are ongoing. Each diverse federally recognized tribe entered into an agreement with the foreign government of the United States to survive. Our tribes experienced a form of genocide on their own homelands and after generations of warfare, reluctantly came to agree to act as a “nation within a nation” so that our children might have a future. This treaty status was based on the promise of the United States to compensate us for the substantial losses we incurred. Today, American Indians are serious about enrollment and laws because of these historic agreements. Used as an excuse by curators such as Ellegood, the claim that this history is too complicated to understand effectively insults and diminishes the dignity and amazing resilience of our people.

As a US Department of Health and Human Services fact sheet summarizes how tribes have attained federally recognized status, “Historically, most of today’s federally recognized tribes received federal recognition status through treaties, acts of Congress, presidential executive orders or other federal administrative actions, or federal court decisions.”<sup>10</sup> Under the treaties, a federally recognized tribe has a special government-to-government relationship with the United States whereby each of the 574 tribes will govern and oversee the operations of their tribe.

The Bureau of Indian Affairs provides guidelines to United States federally recognized tribes in order to enroll as a tribal member. To be a member of a federally recognized tribe, one must provide a pedigree line of family members who descend from the tribal listings organized by the United States census records.<sup>11</sup> Tribes vary in enrollment status by blood quantum, lineal ancestor, or land ownership. The United States requires self-identification for enrollment of American Indian tribal citizens, meaning that if the person wants to become enrolled, they can either be enrolled at

birth by the parents, or at eighteen, enroll on their own recognition with the tribe's enrollment office. Native American tribes are the only race in the country that must provide documentation of their family pedigree to qualify. Under trust and treaty agreements between the United States and tribal nations, enrolled members provide their documentation for health care, housing, education, and land ownership. Because the 574 American Indian tribes are different from one another in beliefs, language, and governments, one law, act, or policy cannot serve all tribes when it comes to protection of the art and culture. The Bureau of Indian Affairs states that, "Each tribe establishes their own requirements for enrollment in the tribe."<sup>12</sup> They further clarify that, "Rarely is Indian Affairs involved in tribal enrollment and membership matters. Tribal enrollment is considered an internal matter governed by the tribe in accordance with its rules."<sup>13</sup>

In *Artpaper*, Suzan Shown Harjo tells of the process it took to lobby congress for a protection law: "The United States has worked for 500 years in fighting to remove the culture of the first people of the land, by enrollment. We were never expected to make it this long by the standards of recognition."<sup>14</sup> American Indian peoples are different from any other minority due to methods of enrollment status that require layers of documentation. There are complex laws that put the government in a paternal relationship to be responsible for tribal nation rights and privileges. The laws are to assure and secure recognition for the American Indian generations to come.

## CONCLUSION

Museums can aid cultural survival by supporting intergenerational exchanges of artistic and cultural foundations for the younger generations. Museums can be inclusive to a cultural connection that has survived hundreds of years of oppression, but museums can only serve in this capacity if they act in accordance with the laws and cultural protocols that have defined Native nations for more than 500 years. A basic understanding of US laws that govern Native nations and the arts is necessary for museums to gain the trust and confidence to form meaningful outreach to our communities. The Durham exhibit's existence, tolerance, and promotion by our country's top art critics, national arts organizations, and most prestigious museums betrays lack of trust, insincere efforts at inclusion, and disregard of Native arts scholarship being produced by a multitude of credentialed academics and professionals.

Museology stands for the business practice and management of institutions. It is essential for museums to become cognizant of applicable laws pertaining to our communities if they are accessioning what they consider to be Native art. Having a well-informed museum administrator requires the business knowledge of policies and laws. Curators play a significant role in excluding diversity by not being fully educated on differences of ethnicity and museum disciplines that contribute to the governance of museums. Recommendations on how to close gaps in museum collections with new acquisitions of contemporary Native American art must include taking the time to understand the laws of Native American tribal federal recognition and Certificates of Degree of Indian Blood (CDIB). Indeed, a majority of authenticity issues in museums

can be resolved by obtaining the cultural affiliation of the artist by starting with the artist's proof of Indian ancestry, an enrollment verification from their listed, federally recognized tribe. When artwork requires multilayers of authenticity, ownership, and permitting, it is only right the measures of accountability begin with identification.

For American Indian artists, the laws have become an equalizer of negotiating power with museums. Native artists and museums have developed mutually beneficial partnerships for research and consulting. Strategic advice is available for the federal, state, and local officials. In the ongoing efforts for increased cultural inclusion, the intangible pedagogies of American Indian communities need to be considered in museum programming. Moreover, museum practicum must engage, educate, and provide interaction to connect with living cultures. The field of museum studies is in need of diversity, but also in need of knowledge to engage with tribal communities directly. Tribal authorities such as knowledge keepers can represent the accurate voice of Indigenous knowledge.

When Native tribes of the United States feel they have an active voice, a narrative of their creativity, they provide vast opportunities for institutions. There are expectations in Native American art. Native artists and professionals expect that non-Native institutions will be educated, know the laws, and act in good faith according to ethics and standards. The current sentiment is, "there is a need to close the gap." Museum collaboration should focus on the relevant issues closest to the Indigenous peoples. This includes our laws and our understandings of who we are as a people. All museums should get to know, reach out to, and collaborate with Native American tribal communities. It seems no one wants to scold the museum community for their part as gatekeepers of contemporary Native art. This exclusion is to the detriment of our cultural institutions embracing the deep and rich intellectual knowledge of their original peoples.

## NOTES

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2. Roy Boney, "Opinion: Jimmie Durham Is Not Cherokee," *Cherokee Phoenix*, November 3, 2017, <https://www.cherokeephox.org/Article/index/11731>.
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4. Anne Ellegood, "Opinion: Curator Anne Ellegood on Understanding the Complexities of Jimmie Durham's Native Identity," *artnet news*, August 2, 2017, <https://news.artnet.com/opinion/anne-ellegood-jimmie-durham-1033907>.
5. US Department of the Interior, Indian Arts and Crafts Board, The Indian Arts and Crafts Act of 1990.
6. For the list of 574 tribes currently federally recognized as of January 30, 2020, see Indian Affairs Bureau notice of January 30, 2020, 85 FR 5462, document number 2020-01707, <https://www.federalregister.gov/documents/2020/01/30/2020-01707/indian-entities-recognized-by-and-eligible-to-receive-services-from-the-united-states-bureau-of>.

7. Gail K. Sheffield, *The Arbitrary Indian* (Norman: University Of Oklahoma Press, 1997), 13.
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14. Suzan Shown Harjo, "Tribal and Cultural Identity: The Case of the Indian Arts and Crafts Act," *ArtPaper* 13, no. 2 (1993): 11.



