A Penny for Your Thoughts: Properties of Anthropology in a Transnational Present[1]

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Abstract: Fieldworkers, and the materials we construct, are situated at a complex intersection of colliding interests. We negotiate agreements of access and use of "information" with individuals, and community, national or transnational authorities. Universities and funding agencies impose sanctions governing the ownership of collected materials and disciplinary tradition provides an ethical universe within which we practice. Finally, fieldworkers are subject to federal and provincial laws, and are thus implicated in the larger controversy of intellectual and cultural property. Through the elicited opinions of fieldworkers I explore the tensions of access, use and ownership of "data" with particular attention to the ownership of field notes.

Résumé: Les ethnographes et les matériaux qu'ils construisent, se situent à la rencontre imprécise d'intérêts en conflit. Nous négocions des ententes d'accès à l'information et de son utilisation avec des individus, des communautés, des autorités nationales et transnationales. Les universités et les fondations imposent des règles sur la propriété du matériel recueilli et la tradition de la discipline maintient un univers éthique à l'intérieur duquel nous travaillons. Finalement, les activités de terrain sont sujettes aux lois fédérales et provinciales et ainsi font partie de la controverse plus étendue sur la propriété intellectuelle et culturelle. En utilisant les opinions recueillies chez les gens de terrain, j'explore les tensions reliées à l'accès, à l'utilisation et à la propriété des « données » en m'attardant de façon particulière à la propriété des notes de terrain.

In this article I attempt to get at some of the more perplexing legal, ethical and epistemological problems surrounding anthropological materials. I question the potential destinations of anthropological *products* situating my discussion within the controversy over ownership of indigenous cultural property and the local, national and transnational contexts which are implicated. Structurally, I follow three phases of research: entering the field and obtaining permission; the creation and ownership of field notes; and academic/institutional sanctions on research materials. First, I consider a Tribal Cultural Properties By-law drafted by the Kainai Tribal Council in southern Alberta. Included here is a general discussion of cultural property in relation to state legislation and international organizations. Second, through elicited opinions of anthropologists, I explore constellations of ethical concern surrounding the ownership of field notes. The many dimensions of this form of documentation cut to the quick of disciplinary dilemmas and constitute the crux of my article. Lastly, a museum Gift Agreement pertaining to the acquisition of oral history materials leads me to a brief discussion of legal copyright and academic sanctions on information.

Legal, disciplinary and cultural practices and discourses implicated in research constitute a collision of *systems of order*. Legally speaking, cultural property, field notes and oral history data fall within the bounds of intellectual property rights (IPR). Cultural property, in an indigenous idiom and *data* in anthropological discourse are cocooned within particular hegemonic structures. In a tribal context, ownership of such *properties* is defined by tradition—collective or individual rights to objects, practices, songs or stories are recognized through cultural mechanisms. In anthropology, the data upon which our texts are constructed constitute career capital collected by single researchers through traditional field work. The *Oxford English Dictionary* defines law as follows: "Body of enacted or customary rules recognized by a community as binding" (1984: 568). As a mode of

social control, law creates and enforces a concept of order (Merry, 1992: 360). Tradition as a "chart" of sorts, provides "categories and rules" and "criteria of judgment" transmitted through ones ancestors to avoid chaos (Shils, 1981: 326).[2] I would suggest that like cultural groups, scholarly traditions constitute particular discursive and practical domains ruled by a customary law of sorts. Key to a definition of tradition is the fact of transmission. Issues of control over different forms of information conceptualized as *property* are therefore central.[3]

Tradition, like law, should be approached as a shifting process imbedded in and reacting to particular relationships of power. Presently, the context of these relationships is a world in which local, national and transnational processes compete on profoundly uneven ground. Differential access to economic resources is an important factor in the legitimation of particular claims over others. State organizations are pivotal. They are systems that acquire and redistribute wealth while maintaining control over populations and competing in an "international system of trade and commerce" (Starr, 1994: 231-232). In this paper wealth refers to information, or knowledge. Comaroff asserts that a "culture of legality" is a dominant feature of the "scaffolding of the modernist nation-state" (1994: xi)

The body of law surrounding intellectual property rights has developed since the 17th century and hinges on two principles. Firstly, "ideas can be treated as property" and secondly, that "state power is necessary to create monopoly rights over these goods" (Brush, 1993: 654). Exclusive rights in the form of patent, copyright, trade secrets and trademarks were historically viewed as incentives for the creation and dissemination of knowledge leading to economic and social benefits for society (Samuels, 1987: 47). Patent law stems from a legacy of secrecy to protect inventions in the Middle Ages. Later, sovereigns used Law by Decree to grant exclusive rights to craft guilds. During the 16th century, these monopolistic arrangements were viewed by the state as harmful to developing systems of trade and business (ibid.: 48). It is interesting that the creation of copyright law was a reaction by 17th-century British Parliament to the monopoly of publishers. Such practices were seen to be detrimental to society because they discouraged the creation of original works. Most significantly, copyright law was enacted to *limit* the time span of protection over rights (ibid.: 54-55). Growth of international trade and the need for incentives to create new technologies required a broadening of expressions covered by copyright law (ibid.). Rights to knowledge "involve people, resources, and access to technology, the issue is inevitably politicized" (Cunningham, 1991: 7).

European expansion was fueled by a vision of *progress* linked to capitalism and nation-state building. Law is inextricably tied into social-cultural processes that maintain power relationships (Merry, 1992: 361). As a "transnational legal process" colonial law was used to create an indigenous wage labour force and to impose the European concept of property.[4] Abrupt changes in the management of knowledge and resources also included the prescription of colonial modes of representation transforming indigenous legal systems "from the embodied, spoken and interpreted text into a fixed, abstracted, and disembodied one that was written" (ibid.: 363-365).[5] Subject to similar processes of colonial oppression, Indigenous people in British settler nations express strong attitudes of distinctness and solidarity. Struggles towards decolonization include negotiations over land claims and an urgent concern for revitalization of important cultural institutions (Cruikshank, 1993: 134). Given the historical context it is not unusual then, that indigenous organizations are framing their authority over culture as *property*. This use of Western legal discourse, should be viewed as problematic; questions of ownership, definition and enforcement of indigenous rights have yet to be resolved. At issue are deeply imbedded notions of intellectual creations as individually created products with commercial value. Strathern connects this to a Euro-American emphasis on "investment in the future" involving "expectations that persons should enjoy the products of their labour" (1996: 17). Common legal usage of the concept of property is:

> That which is peculiar or proper to any one person; that which belongs exclusively to one. In the strict legal sense, an aggregate of rights which are guaranteed and protected by the government. The term is said to extend to every species of valuable right or interest. More specifically, ownership; the unrestricted and exclusive right to a thing; the right to dispose of a thing in every legal way, to possess it, to use it, and to exclude everyone else from interfering with it.... (Black, 1979: 1095)

Identity as Property

Red Crow, chief of the Blood Tribe (1887) and signatory of Treaty Number Seven appears on the fax cover sheet for the Kainaiwa Cultural Property By-law drafted in 1994. He stands holding a pipe and wearing the Treaty medal before the sacred Belly Buttes on the Blood Reserve in southern Alberta. The page turns and the

reader faces a Band Council Resolution form. The letterhead reads "The Department of Indian and Northern Affairs Canada." Boxes, some filled in, some blank, dictate spaces for administrative purposes; file numbers and expenditures. The headings appear in both French and English.

First, the Cultural Property By-law defines the territorial boundary of the reserve lands where the chief and Council have jurisdiction. Confirmation of the responsibility of this body to protect the cultural properties follows. The document then lists elements that comprise, "but not exhaustively," the Blood Tribe cultural properties. Included are material objects such as funerary, religious and artistic creations, tools and ornaments; places such as ancient burial sites "both on and off the reserve" and archaeological sites and finds. Listed also are vital elements of *culture* including "customs, religion and religious practices, traditions, language, oral histories and elders' testimonies."[6]

Why do Kainai people require a legal mechanism to protect their traditional lifeways? Part of the answer rests with the 19th-century establishment of disciplinary fields built on the collection of cultural artifacts. Such *artifacts* of humanity were used to define branches of knowledge as such and became the malleable substance of ethnocentric discourses linked to the bolstering of intellectual elites and nationalistic agendas (Trigger, 1989: 20). Anthropology's "quest for knowledge relied not only on scientific premises but also on ideological paradigms" (Tremblay, 1982: 2). "Nation-state formation has ... involved the active creation of myths of historical origin and tradition to justify" the inclusion of culturally distinct peoples within expanding boundaries (Miles, 1989: 112). At issue today is the imperative of self-definition of indigenous groups within nation-states (Cruikshank, 1993: 141).[7] The appropriation of indigenous cultures by outsiders includes land, art, sciences and ideas (E/CN.4/Sub.2/1993/28: 7). Concerning modern appropriators, Tahltan lawyer Callison names the New Age movement and feminist interpretations of oral traditions; as well, she quotes Lutz's (1990: 168) analogy of non-Aboriginal use of Aboriginal voices and Germans writing on the Holocaust using "the voice of Jewish victims" (Callison, 1995: 169). "Non-Aboriginal people have studied and written about Aboriginal culture to such an extent, both historically and currently, that we have lost cultural autonomy" (ibid.).

Perhaps the most important statement in the Kainai Resolution on cultural property appears last on page one of the document. "The cultural properties are very much the living culture and are the essence of our continued existence as Kainaiwa" (1994: 2). Blackfoot definitions of culture emphasize relationships and praxis (Crowshoe, 1991: 18). How is this living entity, "located ... in their own person and own relationships" to be interpreted and protected within a Western legal framework (Strathern, 1996: 25)?[8] I return to legal references: "property ... is also commonly used to denote everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal" (Black, 1979: 1095).

Page two of the brief Kainaiwa resolution details the tribe's policy on research by/for external sources. Materials written or otherwise pertaining to Blood cultural properties must be reviewed and approved by the chief and Council prior to being published or made public. Access to the information must be made available at any time. Lastly, the form states that non-members of the Blood Tribe who are conducting unauthorized research on the reserve will be removed and persecuted under sections 31 and 91 of the *Indian Act*.

The *Indian Act* is federal legislation that defines and controls those persons "who pursuant to this act are registered as an Indian or entitled to be registered as an Indian" (*Indian Act*, 1989: 1). Section 31 pertains to "relief or remedy" in situations where persons "other than Indians" are trespassing on reserve lands. Notably, the Act states that the Attorney General of Canada will be responsible for pursuing action of removal or persecution through the courts (ibid.: 20). Under the heading "Trading with Indians," section 91 states:

> (1) No person may, *without written consent of the Minister*, acquire title to any of the following property situated on a reserve, namely,
>
> (a) an Indian gravehouse;
>
> (b) a carved grave pole;
>
> (c) a totem pole;
>
> (d) a carved house post; or
>
> (e) a rock embellished with paintings or carvings. ...
>
> (3) No person shall remove, take away, mutilate, disfigure, deface or destroy any chattel referred to in subsection (1) *without the written consent of the Minister*. (Ibid.: 52; emphasis added)

Here, the *Indian Act* comes closest to defining cultural property. The *Oxford English Dictionary* defines "chattel" as "moveable possession" (1984: 157). Clearly, the Department of Indian Affairs in constructing this list concentrates on material objects endowed with powerful symbolic properties. Items listed resonate with what is revered by European traditions as sacred and artistic treasure. Absent are elements of culture such as lan-

guage, customs and oral traditions. The last line of section 91 is perhaps most indicative of the role of the *Indian Act*. It is legislation scripted by a nation-state to control territories, the distribution of resources, and peoples defined as "Indians." Indeed, the Band Council Resolution itself is invested with authority only within the bounds of sections 81 and 82 of the same Act describing the by-law making "Powers of the Council" (ibid.: 45-48). The cultural property by-law is, in effect, an assertion of sovereignty of the Blood Tribe *within* the federal legislation of the *Indian Act*. Jurisdiction is, however, restricted to reserve lands and therefore limited in light of the fact that many infringements occur when traditional information or knowledge is disseminated outside of reserve bounds.

Although there is no standard definition of intellectual property rights, the following is a legal description.

> The bundle of rights which a person (the creator, the inventor, the author, the designer) holds against all other persons in relation to the product of his or her mind. The rights are to prevent others from doing specified acts which may detract from the commercial or intrinsic value of that product. (Leaffer, 1990: 1-2)

Industrial property and copyright law comprise the two major categories of intellectual property rights. The former includes patents (technological information), trademarks (symbolic information) and industrial designs (ibid.: 3). Industrial property law has never been applied to indigenous knowledge or artistic creations (Posey, 1991: 31). Copyright law includes neighbouring rights (expressive information) and encompasses art, music and literature (Leaffer, 1990: 3). National laws are conspicuously silent on intellectual property rights pertaining specifically to Indigenous peoples.

It is interesting to compare the above legal description of IPR with a suggested definition of cultural property.

> The rights held by an ethnic community affecting the use and control of traditional information (corporately held information relating to beliefs, values, and/or traditional behaviour) which define that community as a distinct cultural group. (Ruppert, 1994: 116)

Most glaring are contrasts between individual and collective control. Within tribal societies individuals and kinship groups control rights to various forms of cultural property. "These rights are recognized by tradition" (ibid.: 122; see also Callison, 1995: 166). Performance rights, narratives, "historical accounts of various groups of descent, villages, age grades, or chiefdoms" are classified by Vansina within the realm of copyright and illustrate a defined notion of ownership (1985: 98). Western copyright law is geared around individual ownership. Protection of intellectual property works through the lifetime of *the* author, *the* inventor, plus a period of 50 years. Many forms of indigenous knowledge ("folklore" or "mythology" as it becomes in this context) are without precise authorship or traceable moment of creation (Posey, 1991: 31). Cultural property confounds the notion of intellectual property further:

> ... one of the tests of a group's claims may be the transmissibility of cultural knowledge over the generations: it is authentic because it can be shown to have been handed on. Intellectual property is claimable precisely because it has not. So dispersal has to be controlled. (Strathern, 1996: 24)

Intellectual property has been recognized on an international level with the establishment by the United Nations of the World Intellectual Property Organization (WIPO). In 1992 this group found that:

> There is a relationship, in the laws and philosophies of indigenous peoples, between cultural property and intellectual property, and that the protection of both is essential to the indigenous peoples' cultural and economic survival and development. (E/CN.4/Sub.2/1992/30)

Paradoxically, the recognition of group rights depends to some extent on the recognition of group sovereignty. At the level of the nation-state—the Kainai Cultural Property By-law is subject to the discretion of the Minister of Indian Affairs.

> A great deal of what is done to native peoples the world over is on the assumption that any sort of ethnic attachment is subversive and, in the long run, separatist and therefore ought not to be tolerated. (Maybury-Lewis, 1990: 15)

State-Indigenous group relations involve complex interactions between different bureaucratic agencies, tribal organizations and international processes. The body most willing to deal with intellectual property rights and Indigenous issues is the United Nations.[9] This organization drafts declarations and reports that can exert a strong influence on the passage of national legislation.[10] An important acknowledgment by the United Nations is that the most effective means for protecting indigenous cultural property is through "territorial rights and self-determination" (E/CN.4/Sub.2/1993/28). This is framed as a human rights issue. Recognizing concerns of indigenous groups, the U.N. divided the area of intellectual

property rights into three categories: folklore and crafts; biodiversity; and indigenous knowledge (Suagee, 1994: 201). In a recent meeting on the protection of "heritage" of indigenous people this body made a resolution (E/CN.4/ Sub2/1997/15) to endorse principles and guidelines presented in the 1994 Draft of the Declaration on Rights of Indigenous Peoples:

> Indigenous peoples are entitled to the recognition of the full ownership, control and protection of their cultural and intellectual property. They have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs and visual and performing arts. (E/CN.4/Sub2/1994/31, quoted in Suagee, 1994: 199)

WIPO developed a 1984 document called "The Model Provisions for National Laws on the Protection of Expressions of Folklore against Illicit Exploitation and Other Prejudicial Actions." Proposed here, is the recognition of individual *and* collective rights to folklore including the protection of oral materials as well as written. Most profoundly, the Model Provisions urged that the authority and enforcement of cultural properties research be in the hands of the community (Posey, 1991: 31). Resolutions of the United Nations are, however, only guidelines for member nation-states. In 1991 no country had adopted them. Canada, Brazil and the United States were opposed to the use of the word "indigenous" (ibid.).[11] Several scholars question the struggle for control over cultural property through Western legal mechanisms (Greaves, 1994; Posey, 1991; Strathern, 1996: 22). Posey suggests that even though United Nations' conventions contain no authority for enforcement they are valuable cornerstones to argue legal and ethical positions (ibid.: 30).

Perhaps most pressing is the use of traditional knowledge of remedies and medicines, plants and animals in ethnopharmacology. As Brush points out, access to such knowledge is often controlled by experts within the communities (1993: 657). An interesting tension appears between local practices of control over information, and the basis of a fight for recognition of the collective. Implicit in the approach to ethnobotanical knowledge is the assumption that these remedies are to be found in nature and are not the "products of human knowledge" (Elizabetsky, 1991: 10). On a transnational stage the so-called "genetic resources" are perceived to be common property belonging to the whole of humanity (Brush, 1993: 657). Rights to biological information "followed the scientific transformation of agriculture and other industries" using these materials (ibid.: 658). Knowledge elicited from local cultural specialists (usually called "folklore" or "tradition") is brought to corporate or academic laboratories in *first world* nations for the purpose of creating new products for private profit (Kloppenburg, 1991: 16). In many cases there is not adequate compensation to those imparting the information, and the credit for discovery goes to the scientists (Cunningham, 1991: 4).

It is predictable, given a capitalist worldview, to comprehend the exploitation of cultural resources that translate easily into profit. What of the forms of cultural property that do not? Cultural resources include "symbols, ideas, cultural uses and interpretations" (Pinel and Evans, 1994: 51). How do nation-states use representations of and imagery from indigenous cultures? Arriving at Canadian and Australian airports I have come to expect the sight of glass cases displaying the works of Indigenous artists and artisans. The image of the beaded and bonneted Native plains chief and the crimson Mountie are standard symbols on Canadian post cards. National galleries display the works of prominent Aboriginal artists. Are these not expressions of nationalism—signs that states have incorporated into their identities the indigenous populations that are oppressed within them? Or is it, simply, that culture sells?[12] Where are researchers situated in the cross-currents of images and symbolic properties?

What Knowledge and Knowledge for What?[13]

I open this section of my article highlighting a disciplinary assumption "that theory and method are the encompassing levels of discourse, and that knowledge of the practical, or knowledge-in-use derives from this higher level" (Harries-Jones, 1990: 240). Here I will discuss ownership and uses of field notes constructed in the process of arriving at anthropological *products*.

The agenda of progress has shifted from the production of material wealth through industrialization to "knowledge organizations" (ibid.: 235). Issues of intellectual property intersect with international trade as Western societies are increasingly technology and information based (Samuels, 1987: 48). "As the new centres of production of information and ideas in commodity form, universities have ... become crucial to the economic viability of the nation" (Harries-Jones, 1990: 235). The part played by anthropology is somewhat obscure

although significant. An understanding of *folk* or indigenous sciences and philosophies has contributed globally to knowledge of medicines, agriculture and biodiversity (Brush, 1993: 658). Representations, whether framed in terms of the exotic *primitive* or the indigenous *other* contribute to the popular imagination of the West and are manifest in cultural tourism and the imagery of advertising. In its haste to establish itself as a legitimate field of study, anthropology defined its disciplinary bounds by instituting a set of principles for practice. Clashes between what I will call *laws of anthropology* and the protection of indigenous cultural property are important to consider.

Bond distinguishes the "terrain" of field notes as one "marked by secrecy and taboo" (1990: 273). To another anthropologist they represent a "bizarre genre" that encapsulates the "doing of fieldwork and the writing of ethnography" (Lederman, 1990: 72). Ethnographic field work is intensely personal, relies a great deal on collaboration with participants, and involves, to some extent, serendipity. Fieldnotes, then are "part of the process of a negotiated and refracted reality, constructed in the interplay with our local tutors and informants, our observations and our theories" (Bond, 1990: 276). The insecurity surrounding field notes may best be seen as a disciplinary anxiety over validity (Sanjek, 1990: 394-395). According to Sanjek, there are three "canons" of ethnographic validity: theoretical candor, the ethnographer's path and field note evidence (ibid.: 395-404). While all three may be written into the resulting ethnography, field notes are rarely viewed by a public audience. They constitute the private treasures of professionals whose careers may hinge on an academic edict of *publish or perish*. This is the terrain of personal property.

> Anyhow with this letter I do you a request. But when you think it will be bad for your Bali book, I won't do it. Do you think I can write a short article about the cockfight.... But I tell you if you think this action will be a bit bad for your book, I won't do it. I don't want to make profit of any of the stuff we have collected. It belongs all to you. (Mead, 1977: 238 in Sanjek, 1990: 408)

The above is from a letter written by I Made Kaler to Mead in 1938. It is an uncomfortable artifact of the asymmetry that characterize(d) traditional relationships between *informants* and ethnographers. Perhaps ironically, the writer identifies Mead's ownership of materials that were collected together.

Ethnographic research has witnessed a sea change since pioneers such as Mead conducted their initial forays into tropical societies. Most notable is the increasing recognition of indigenous groups in political spheres (Messer, 1993: 238). "Anthropology is structured by the on-going and cumulative historical experience of encounters and comprehensions between Europeans and others" (Stocking, 1983: 56). In the last 30 years, anthropologists have reformulated their approaches in response to efforts of decolonization. Publishing realms are now shared by those persons who formerly appeared as *informants* in texts. Participants in research express clear critiques of oppression and exploitation—many "use legal claims framed in transnational discourses of human rights, treaty rights, or self-determination" (Merry, 1992: 368). It is this context within which participant people are demanding to have control over the *information* collected by anthropologists. Does this include field notes?

Scholars have copyright over ethnographic interpretations and field work materials constructed during and after research (Pinel and Evans, 1994: 49). In this legal context that privileges individual ownership we witness what disciplinary tradition would call "academic freedom" and we are forced to acknowledge that "rights" are culturally biased (ibid.: 50).

> The members of the University enjoy certain rights and privileges essential to the fulfillment of its primary functions: instruction and the pursuit of knowledge. Central among these rights is the freedom, within the law, to pursue what seem to them fruitful avenues of inquiry, to teach and *to learn unhindered by external or non-academic constraints*, to engage in full and unrestrained consideration of any opinion.... ("Academic Freedom," *University of British Columbia Calendar*, 1995-96: 49; emphasis added)

Attention is drawn to distinctions between the value and use of *information* in scholarly, social, and legal contexts (Pinel and Evans, 1994: 53).

Information recorded, perhaps unwittingly, by fieldworkers, is undeniably useful to people pursuing recognition within legal and political arenas. Materials are mined for verification of historical claims to lands, traditional resource activities or forms of leadership and government. A researcher whose intellectual interests do not fall in these areas may never publish these materials.[14] As *witness* the anthropologist may be recording crucial interactions between oppressive national regimes and subordinated groups. The irony, of course, is that these textualized accounts hold a somehow objective aura of legitimacy, particularly within a literalist legal culture.[15] There are, however, some disturbing ethical dilemmas that surround the return of field notes to communities

from which they were elicited. I call on the responses of professional anthropologists/fieldworkers whom I contacted with this question.

> This is a request for your participation in a research project for "Anthropology and the Law." During discussion, the use of field notes was raised. Some members of the class felt that upon completion of a research project, field notes should become the property of the community. Notably, the discussion referred to First Nations' use of these materials. Regardless of your research setting I am interested in your perceptions of the nature of this documentation and your reactions to the above suggestions as individuals operating within the bounds of disciplinary, institutional and legal contexts. Should you choose to participate please be assured that this is entirely confidential—your responses are anonymous. Unless specified, in responding you give your permission for your anonymous answers to be quoted in my paper.[16]

Two respondents addressed the need to make participants aware of the creation of different modes of documentation.

> ... Like audio or video tapes, purchased museum specimens, and intended publications, fieldnotes are products of research and subjects should be made aware of them. (Written response)

> The role I took was professional. I had a push for time, it is a professional relationship. I conducted formal interviews, where individuals expected my book to be open. They knew that I was recording, they were aware of my books.... I had six fieldnote books. Number 5 was the good one—the "book of secrets" as they called it.... (Personal interview, notes)

The first statement of the Society for Applied Anthropology on Professional and Ethic Responsibility reads: "To the people we study we owe disclosure of our research goals, methods and sponsorship" (van Willigen, 1986: 52). A shroud of secrecy obscures the activities involved in anthropological field work. Marxist critiques in particular address the complicitness in anthropology's past of contributing to colonial and imperialist agendas. Perhaps most vivid in the public memory is the counterinsurgency research conducted during the Vietnam War era (Messer, 1993: 238). Another aspect of secrecy involves what Ryan calls "a characteristic of academic elites ... the idea that knowledge is ... to be shared only by those admitted to the inner circle and to be guarded by them" (1990: 212). Guarding of disciplinary boundaries is most evident in the discursive realm of the discipline. Dissemination of anthropological knowledge commonly occurs through exclusive mediums: journals and other texts, seminars and conferences. Literary products mark the "major object of disciplinary advancement" (Tremblay, 1982: 5).

Although I was very interested in what anthropologists had to say about the *nature* of field notes, only two respondents chose to comment on this.

> Fieldnotes are not some perfect representation of something that exists out there—they are a construction based on impressions offered in a particular context (even tape recordings have this virtue of course).... (Written response)

> What was I thinking? In my fieldnotes there is an omission of personal experience and often context—kitchens where I interviewed, moods of people.... What I felt was important was theoretical, logical. I don't legitimize my emotions within anthropology. Being a mother— time was the most important factor. That defined my notes. It's not a job for a person who has a life—it's a job for Evans-Pritchard! I take a scientific approach—not "I am a fieldnote" [where there are] no records, just memory. You have to train yourself to write everything down as it happens. I would like someone else to make sense of my fieldnotes.... How dare people get money and spend two years without producing fieldnotes. Its exploitative—Produce a record! (Notes from personal interview)

Concerning the question of returning field notes to the community where work was conducted, all respondents agreed with the practice as "good ethics." One person went further writing:

> I strongly agree with this policy and think that we should attempt to give copies of notes, drawings, maps, and photographs from earlier projects when this was not a formal requirement. (Written response)

"Formal requirements" may include cultural property by-laws of individual groups and obligations to contracting agencies. While each fieldworker acknowledged a personal attachment to their field notes—they claimed no exclusive ownership over the materials. Ruppert (1994: 113-128) discusses research conducted with First Nations groups for the United States Parks Service. His paper is valuable in that it highlights problems he encountered when the funding agency was the United States government. In this case Ruppert and the Parks Service held equal rights to the materials he elicited—the data collected, however, became public property. Although the government and Ruppert sought to protect the elicited materials by turning control over

to the First Nations involved, no legal mechanism exists for the transfer of public property to a private party (ibid.: 118). Ruppert outlines the distinctions between a grant and a contract. The former, says he, is a looser agreement structured around the goals of the researcher while the latter is strict in design and administration and is motivated by profit. As a contractor for the U.S. Park Service, Ruppert was bound to create a *product*. He asks the question: "Are a researcher's fieldnotes the object of procurement, or is a report, summary, or analysis the object of the purchase?" (ibid.: 121-122). The legal ground is fuzzy. Ruppert is concerned with ownership of the notes because of the "culturally sensitive properties" they contain (ibid.). Perhaps the ultimate irony is that in order for indigenous people to make a case for protection of rights to cultural property, they must make some sacred materials public (Pinel and Evans, 1994: 49).

I find it important here, to distinguish between what Geertz called "Being here: Being there" (1988: 1ff). The context within which the initial question of disposition of field notes was raised, concerned First Nations' people of North America. During informal discussions with anthropologists whose research fields are "there" I have heard descriptions of researchers working with First Nations as "too politically correct." The political and representational contexts of research structure possible routes through which *information* travels. Bell raises the issue regarding her field work with Australian Aboriginal women. To her, "know(ing) something of the larger forces that shape the lives of all, not just the group with whom one works" translates into a form of accountability through shared citizenship (1993: 294). I would suggest that issues of access to research materials are extremely relevant here.

Three of the anthropologists I called on to respond to the question of field notes work in distant locations where their research was/is authorized by the agencies of military national regimes

> I would never just hand over my fieldnotes to [Government research organization]. It would be nice to think that those voices would be heard by those in power but I think that it would really endanger some of the people I worked with.... I kept a lot of stuff in my head—sent copies of all of my notes home—You never know they could just seize them at the airport or something.... (Notes, telephone interview.)

> The _____ Government supervises researchers closely and NGO's have their expectations too.... This ties into what I think anthropologists are supposed to do, the role of anthropology. There is a legacy of works—Spivak ... and Asad deal with dominance. Anthropologists overestimate their own importance and the role of the discipline in changing the world—righting wrongs. Anthropologists pose little threat to those in power. To me its the legacy of teaching, the intellectual process where you make an important impact on a local community.... [Handing over my field notes] won't change anything. It may threaten other relationships for anthropologists coming after me.... My presence there was political. I can show that culture is strong—that would be good for the local [religious] leader but it gives no credibility to the indigenous voice with the Government. Fieldnotes might slightly worsen [Government-Indigenous] relations for a short time. But they are easy to discredit.... (Notes, personal interview)

> Fieldnotes are a real issue for people in the [region]. They are unpublished, its a political and intellectual issue. I have guilt associated with keeping them. It's unethical, it's unfair. We're [ethnographers] considered elders now—it's our responsibility to contribute our knowledge. At one time it was a rather precarious political context—now it's different. (Personal communication, notes)

Transnational contexts within which many anthropologists conduct research are challenging. Often, like the people they work with, researchers are juggling demands from states, religious authorities, transnational corporations, Non-Government Organizations and funding agencies (Messer, 1993: 236). "How effective can anthropologists be ... without threatening the future of anthropology or anthropologists in the host country?" (ibid.: 238)

The political context of field work and the construction of field notes is tied inextricably to the primary edict of anthropological ethics: *Do no harm*.

> One of the problems in community-wide studies (most ethnographic research) is that many different research agreements are entered upon—one with the governing body of a community, others with each individual informant who may be interviewed. The common element is the researcher, who has an unavoidable responsibility to all participants. Part of this is to ensure that the research does not injure any of the subjects. This may require privacy or confidentiality of one part of the research from another. (Written response)

> Where journals are kept, people will write things down that they should not. In a situation where great care is often taken so that anonymity is maintained, field notes often will destroy this.... Certainly some form of "raw

> data" needs to be made available to the community. Probably the form would ideally be specified in the permit process, with the emphasis on protecting individuals. (Written response)

Researchers are subject to federal and provincial laws, disciplinary ethics and contracts with the local communities and individuals where they conduct research. One respondent stated that the *Freedom of Information and Privacy Act of British Columbia* would protect the rights of a researcher to maintain possession of field note materials. Under the heading "Disclosure Harmful to Personal Privacy" Section 22(1) reads: "... may refuse to disclose ... if ... the personal information has been supplied in confidence." Another respondent emphatically wrote:

> Research agreements or contracts with subjects, or state laws of privacy or confidentiality, should not be used by researchers to side-step their personal responsibility. (Written response)

Ethical guidelines stipulate the protection of individuals' anonymity.

> The people we study must be made aware of the likely limits of confidentiality and must not be promised a greater degree of confidentiality than can be realistically expected under current legal circumstances in our respective nations. (van Willigen, 1986: 52)

Ethical dilemmas involved in turning over field note materials are multidimensional. First, as the respondent below asks: Who represents the community? Responses show that in some areas governments control information and the disclosure of materials could unwittingly identify local leaders to military authorities; threaten community relations; or jeopardize the position of the researcher. Second, there exists a tension between the ideals of conducting research on contentious issues and again, threatening the professional and ethical stance of the researcher

> I don't believe that as a general rule researchers are necessarily obliged to provide fieldnotes to the community. How you would define community is one problem.... Some fieldwork focuses upon conflict in "communities" and it is not clear that fieldnotes would be usefully distributed. Finally, if these fieldnotes are going to be passed along to the Head of my Dept., as the official representative of this community, I might censor, quite severely, what I say. (Written response)

In my research on intercultural interaction between First Nation and non-Native communities these issues are particularly potent. I did not separate field note materials on each community for the object of study was precisely the interactions between them. The issues I dealt with revolved around racism and relationships between the two communities that have a history of conflict. Given my ethical responsibility to protect *all* participants of the study, where could the field notes be of best use? A partial resolution rests with yet another rendering of the original materials.

All respondents agreed that some kind of editing would be required prior to handing over field note materials.

> The "____" are currently creating a literary record of themselves. I would be honored if I was asked to contribute my fieldnotes but I would reserve the right to cut out anything I wanted to. Maybe it would be a summary of my fieldnotes—I wouldn't give them my "ideas" book ("emotions came out much more clearly in this book"). (Personal interview, notes)

> It should be understood from the start that researchers will need to keep some information confidential—this possibility should be allowed for or understood to be the case, when research agreements are made. The best approach in a situation where fieldnotes are to be placed in an archives or turned over to communities, may be to agree that there still may be a researcher's confidential record—not the property of anyone else. (Written response)

> What should be done? I expect keeping notes from the ground up with these factors in mind is one thing. [The reference is to the identification of informants and legal anthropological testimony.] Editing notes to remove anything that identifies people beyond the formal arrangements made with the band, etc. is another. (Written response)

> I would want the opportunity to edit my fieldnotes. Mostly, because of embarrassment I feel over botched notes. I collected so many genealogies. These aren't just notations of descent they are peoples' ancestors—and perhaps I spilt coffee on them! I would also want to edit out personal materials. (Personal communication, notes)

Practitioners of the discipline cover a vast spectrum of approaches ranging from applied to predominantly theoretical works. The *laws* of anthropology, as I have called them, are based primarily on ethical *guidelines*.

> Because research topics may be so varied, and the scope of participation and involvement in research may be so diverse in scale ... there can be no single best

rule about disposition of notes that would fit all cases. (Written response)

It is noteworthy that although field work is *the* empirical "constituting experience" of anthropologists and their knowledge, there is a dearth of training or discussion on some of the more problematic areas of the practice (Stocking, 1983: 7-8). Since the early British School of Anthropology inscribed the field work method as unique to the discipline, the *mythic character* of a single researcher in the field has remained. Paine suggests that this disciplinary law promotes a kind of "loneliness born of the unique pretension of a discipline that has left each practitioner with a sole responsibility for the collection, presentation and interpretation of research data" (1990: 251). His discussion revolves around making the decision to "translate or advocate?" (ibid.). I suggest that this decision is further complicated by the laws existing within academic institutions where many researchers have some obligations. Here, our theses and dissertations become *career capital* that satisfy disciplinary requirements and mark out areas of future specialization.[17]

Tensions between personal responsibility and career requirements bring us back to the question of field notes in terms of property. The legal definition of the term as stated above deals with possession, use or disposal of a thing. One respondent stated that a researcher's responsibilities included:

> . . . the necessity to decide whether to destroy or keep records, and if they are to be kept, how to regulate use. Keeping of records entails costs of two kinds: (a) material costs of storing and conservation, and (b) costs of controlling access and use. Agreements to turn notes over to other individuals, or to communities, should not be made without making reasonably sure the recipient is made aware of the costs and is willing and able to provide the care they require—including regulating access and use as agreed upon when the research notes were produced. . . . (Written response)

One suggestion is that disciplinary bodies should require the preservation of the "anthropological record" in a specified institutional location (Krech and Sturtevant, 1992: 121). The question of access to research materials has no simple answer. Time restrictions are one possibility, but what if the materials inscribe secret knowledge not shared in the community of origin? (ibid.: 125). Complications arise when material deals with the issue of conflict between and within groups. A partial solution rests in combined efforts between scholars and local custodians of records. Many First Nation communities work with the field notes of living researchers and those now deceased. Authorized individuals manage the information within whatever bounds are appropriate.

I am currently conducting research in rural B.C. with people from First Nation and Euro-Canadian communities. Although not phrased in terms of copyright or cultural property, participants from both communities are extremely aware of the potential destinations for the material I am eliciting. To First Nation individuals it is an issue stemming from a long history of *being studied*, sometimes by people using deceitful tactics. Loss of both representational control and the subsequent political and commercial benefits are of great concern. Euro-Canadians are witnessing an eruption of books on local history and express strong opinions about exploitative *strangers* misrepresenting the past and making money. In contrast to research conducted five years ago, individuals I am working with appreciate the use of a consent form and the accountability that this suggests. I now write my field notes with greater care: information identifying individuals is absent; my more personal thoughts are inscribed elsewhere; I have informed people that I write notes each day. Formal interviews take more time: transcriptions are gone over with each participant to confirm permission to use material. Copies of my field notes will be offered to local archives in both communities. Transcripts of interviews with individuals will remain confidential as stipulated in the consent form.

My final section of this article opens with a Gift Agreement between a museum and myself regarding the institution's acquisition of 25 oral history tapes. Here I am trying to get at further complexities in the flow of anthropological *information*: ownership and legal responsibility for works and academic/institutional sanctions.

Data: Faces of the Scholarly Commodity

The "property" referred to in the agreement consists of tapes and calendars I constructed while employed by Parks Canada. The oral histories were elicited from Euro-Canadian *pioneers* residing in and around the national park in commemoration of the park's centennial year. As a complicating factor, a provincial heritage foundation provided some monetary support for the project stipulating that the materials be made accessible to the public through a recognized institution. In this case federal, provincial, institutional and scholarly interests are confounded.

Parks Canada was recently placed in the newly created Department of Canadian Heritage of the Federal Government. I was hired by Cultural Resources Management within Parks Canada. Materials I elicited were to

contribute to the park *information system* in such areas as archaeological sites; natural resource extraction; traditional land use (ranching, agriculture and subsistence); and *culture*. Authorization forms stated that any or all of the elicited oral history may be used by Parks Canada and private researchers. In some cases individual restrictions were entered onto the form. Parks Canada informed me prior to conducting the research that I had copyright over the materials. According to the Canadian Copyright Law "where any work is, or has been, prepared or published by or under the direction or control of any government department, the copyright in that work belongs to the government" (Harris, 1995: 89). The "creators of these works" however, are their "authors" (ibid.).

In the case of sound recordings, "the author . . . is the person who made the arrangements for the recording" (Cornish, 1990: 67; see also Callison, 1995). This legal distinction separates form from content. Copyright is said to "subsist" within the form in which an idea is clothed . . . not in the idea itself (McCabe, 1990: 122).[18] Here, the rationale is that *a fact is a fact* and therefore not subject to protection. There may, however, be two separate owners of copyright in the case of sound recordings (Harris, 1995: 83). As "creator" of the interview, I have copyright over the recording, however, the speakers of the words have copyright in the material (Cornish, 1990: 67; Harris, 1995: 83). Legislation dealing with copyright law focuses mostly on the reproduction of materials rather than the complexities of ownership. Copyright infringements are dealt with in civil court and must be initiated by the owner of the copyright (McCabe, 1990: 122). Protection from copying extends from the point of creation of the *property*, through the lifetime of the author until 50 years after his/her death (ibid.; see also Callison for implications for First Nations' oral traditions, 1995: 174-178).

Archival collections function as custodian and distributor of knowledge. "Generally all museums collect, preserve, use and house artifacts for the benefit of society" (Silverman and Parezo, 1992: 62). The Gift Agreement in my case asks that I:

> assign absolutely and forever my entire rights, clear deed and universal copyright, ownership, estate and interests in and to the objects to the Museum as an unrestricted and unconditional gift.

While asked to give up my rights to the materials I am also signing to accept responsibility for "any charges, claims, demands or expenses related to failure to observe any Provincial or Federal laws." These include "slander (verbal falsehood), libel (written falsehood) and defamation (statements that injure reputations) . . . a person who has died, who is not a public figure, and about whom malice was not intended cannot be defamed" (Krech and Sturtevant, 1992: 125).

Issues arising from this document concern *laws* of academe—priority of publication, co-authorship and what I consider to be a failure on the part of my discipline to raise awareness of legal-ethical implications of anthropological practice. Universities are themselves struggling to justify their existence in a societal environment that presently holds economic interests above all else.[19] Within the institutions, disciplines compete for support and strive to justify their domains of knowledge. Within the disciplines, students compete for funding based on past performance and *originality* of research interests. Faculty and students are pressured to publish works that are viewed as tangible evidence of productivity. When the oral history materials from my project enter the public domain, they lose the status of original work. Ryan writes of a collaborative project with a First Nation community wherein the Band maintained copyright over research materials. The researchers were graduate students, and conflict arose with the Dean of Graduate Studies regarding the loss of control over the knowledge generated through the work (1990: 210-211). Once again, the issue pivots on ethics.

Control over information is commonplace in many social collectivities (Vansina, 1985: 96). Within institutional traditions, "Academic Regulations" prescribe acceptable modes of conduct regarding knowledge. As custom dictates, I reference my disciplinary ancestors and contemporaries thus recognizing their original contributions to my presentation of ideas.[20] Sanctions surrounding plagiarism are particularly potent in the scholarly realm.

> Plagiarism is a form of academic misconduct in which an individual submits or presents the work of another person as his or her own. Scholarship, quite properly rests upon examining and referring to the thoughts and writings of others. (*University of British Columbia Calendar*, 1995-96: 52)

What of the *traditional* narratives collected in the field that constitute the *data* upon which anthropological products are based? Clearly, the edict excludes such forms. The following statement appears within the university's definition of plagiarism.

> Damaging, removing or making unauthorized use of University property, or the personal property of faculty,

> staff, students, or others at the University. Without restricting the generality of the meaning of "property" it includes information however it be recorded or stored. (Ibid.: 53)

Tremblay raises a question regarding field work: Is our "presence in their midst for our own personal advancement, rather than altruistic reasons?" (1982: 4). The solution seems obvious. Anthropological practice must proceed with "conscientious consideration of the interests of the research population in the research design process" (van Willigen, 1986: 47). Indeed, as I have shown above, researchers work with people who "impose conditions for entering their community and control observational settings" (Tremblay, 1982: 4). Shift in power from university-initiated research, to models arrived at through dialogue with local communities calls for a collaborative approach and ultimately, co-authorship (Cruikshank, 1993: 134). This turn threatens the boundaries of anthropology as an authoritative scientific enterprise. It also poses an enormous challenge to new generations of scholars who are simultaneously seeking credentials within disciplinary traditions and doing research in increasingly high-profile, political contexts.

Conclusion

> What would be the result if science as a whole and anthropological sciences in particular did not have a monopolistic control over what has been customarily labeled "the universe of knowledge?" (Tremblay, 1982: 6-7)

This article has raised more questions than it has provided answers. At base is the question of how to reconcile the collision of cultural discourses and practices constituting systems of order in different contexts. Control over the creation, ownership and dispersal of knowledge takes on particular forms within and between "different social collectives" (Strathern, 1996: 24). Echoing Strathern, what is most important is to look to the places where the flow of information is cut off and claimed.

Regarding the Kainai Cultural Property by-law, conflicts arise between notions of customary law and Western legal discourses; collective and individual rights to ownership; and Indigenous-nation-state struggles for control over resources. The Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples calls for definition of these properties by the communities themselves (E/CN.4/Sub.2/AC.4/1993/GRP.5: 3). Development of codes of ethics for external researchers and an assessment of existing legislation regarding the protection of cultural properties are also suggested (ibid.: 4). Recommendations to national laws include the recognition of collective *and* individual rights, and retroactive and multigenerational coverage of properties within a "cooperative rather than competitive framework" (ibid.: 5).

The Executive Summary on Aboriginal self-government in Canada states that "negotiable self-government powers" include:

> the establishment of governing structures, leadership selection and group membership; language, culture, religion; education; land, resource and environmental management on Aboriginal lands and a range of authorities in areas such as health and social services, law enforcement and administration, housing, taxation, policing,... regulation and operation of Aboriginal businesses, among others.... Negotiated self-government arrangements would enable First Nations to exercise control over their own affairs and deliver programs and services better tailored to their own values and cultures. (1995: 4-5)

Authority to pass laws over "those parts of the National legal framework that apply to all Canadians" is not included in *negotiated arrangements*. Under the heading "Other National Interest Powers," the Federal Policy Guide on which the Executive Summary is based, states that regarding intellectual property rights, "it is necessary that the Federal Government maintain its law making authority" (1995).[21]

As individuals subject to law's authority and working within local and ethical contexts, researchers constitute a site at the crossroads of controversy about cultural property. They are aware of and expect to work within some sort of formal agreement with communities and individuals regarding control over information. Field notes remain, however, an ambiguous entity in the final tally of ownership over research materials. Respondents in this study offered views about the disposition of notes that go beyond a community's rights to cultural property. Concerns included: anonymity and confidentiality required in the case of local conflicts; exposing communities to threats by government, bureaucratic and military authorities; errors in recorded information that may later undermine community rights'; exposure of the researcher's private, emotional expressions; and ensuring adequate archival techniques and dissemination protocol.

Within universities the management of original research materials must satisfy the laws of academia that prescribe the criteria within which we become members

of our tradition. The requirement to maintain personal ownership over information for teaching purposes and professional advancement is strict. Not surprisingly, *law* and *property* are invoked in statements on academic freedom and plagiarism. Academia is strangely silent when it comes to discussing control over products of research and potential legal repercussions. As my discussion of the Gift Agreement shows, issues of copyright and legal responsibility are not at all straightforward. Right now, disciplinary opinions are sought to translate the world views of others within cultures of legality. Our scholarly and professional *products* are subject to subpoena in legal arenas and are open to the scrutiny of those people with whom we work.

Many scholars are now examining transnational processes. Works call for the conceptualization of models to articulate new relationships between "states, peoples and cultures on a world scale" (Balibar, 1991: 21). Capitalist and nationalist ideologies, intellectual traditions and realms of lived experience are complicit in the 20th-century *fact* of the "changing social, territorial and cultural reproduction of group identity" (Appadurai, 1991: 191). Theoretically, research includes processes of change—particularly colonialism and capitalist expansion (Ortner, 1984: 158). Research contexts have shifted from a primarily small-scale society focus, to the inclusion of state-local relations. This move threatens the implicitly non-political nature of much anthropological work (Messer, 1993: 221). Highlighted, are traditional values such as objectivity and relativism; the concept of culture as a neatly bounded entity; and, in the case of challenging political authorities, threats to field work opportunities (ibid.: 224; see also Harries-Jones, 1990: 236). "The change is not in what you find, but what you do with what you find" (Paine, 1990: 252).

What is required is a reconfiguration of the ways in which we conceptualize our practice, difficult introspection on the part of bureaucratic institutions and scholarly traditions. As I have shown, the tension extends to the recognition of autonomous local laws within the interests of nation-states that attempt to homogenize diverse systems (Merry, 1992: 357). "Law maintains power relationships" makes them seem natural, endowed with legitimacy and authority (ibid.: 361-362). This is evident in disciplinary traditions, indigenous customary practices and the legal framework of property rights.

Notes

1 I would like to thank the fieldworkers who contributed their views to this paper; Bruce Miller who raised the issue of ownership of field notes in a graduate seminar; Julie Cruikshank, Leslie Butt and Nancy Wachowich for their comments; and the reviewers for their critical encouragement.

2 Other concepts around which anthropology constitutes itself are also imbued with a sense of continuity and stability. To Clifford, "culture... orders phenomena in ways that privilege the coherent, balanced and 'authentic' aspects of a shared life" in general opposition to anarchy (1988: 232-234). Jackson views the idea of objectivity within the discipline of anthropology in much the same way. He sees it as a "magical token, bolstering our sense of self in disorienting situations" (1989: 3).

3 It is interesting to note that in Roman Law, "traditio" was the term used for the transfer of ownership of private property (Shils, 1981: 16).

4 The significance of property has occupied scholars in anthropology since the 19th century. It is interesting to note that two eminent scholars concerned with the concept—Morgan and Maine were both practising lawyers. Property was described by Lewis Henry Morgan as "a passion over all other passions [that] marks the commencement of civilization" (1877: 6). As a witness to the land grab that was occurring in frontier America, he felt that the establishment of political society for Native peoples was dependent on the adoption of private ownership and an acceptance of the "idea of property."

5 The legacy of intellectual beliefs justifying colonial law require examination. An Enlightenment world view had waged war against tradition. It was perceived as "the cause or the consequence of ignorance, superstition, clerical dominance, religious intolerance, social hierarchy..." (Shils, 1981: 6). In the quest to promote progress of human societies, a dichotomy was established polarizing scientific and traditional knowledge. The former was based on rationality and the individual experience of the senses; the latter belonged to the authoritative regimes of elders and monarchs (ibid.: 4). From the mid to late 19th century, anthropologists made broad generalizations involving laws that guided the evolution of humanity towards higher levels of rationality. An obsession with development lead rationalists to envision "progress from savagery to the highest civilization and improvement" (Evans-Pritchard, 1981: 14). Colonial officials sought to abolish hierarchy, religious devotion and illiteracy by enforcing laws that emphasized individualistic and meritocratic ideals (Shils, 1981: 11).

6 The list reflects phenomena that have traditionally constituted the domain of anthropological enquiry. "Culture or Civilization, taken in its ethnographic sense, is that complex whole which includes knowledge, belief, art, morals, laws, custom and any other capabilities and habits acquired by [hu]man as a member of society" (Tylor, 1871: 1:1).

7 "Cultural distinctiveness has been integral to the history of exchange between aboriginal nations and the Euro-Canadian state" (Scott, 1993: 328). As a political tool, "culture" is embedded in discourses of self-government. Scott comments on the inflexible use of the term by the nation-state in contrast to a "reality of aboriginal culture[s] as changing, adapting, and developing" (ibid.: 312).

8 As Strathern notes, *culture* itself is drawn into the debate. "Global spread" and "recent diaspora" complicate the "difficulty of identifying cultural ownership [which] must include

the fact that cultures are not discreet bodies: it is 'societies' that set up boundaries" (1996: 23).

9 WIPO administers conventions for the protection of cultural properties of indigenous groups. "Most conventions simply establish standards for accountability and reciprocity of State parties' national legislation" (E/CN.4/Sub.2/1993/28: 31).

10 Suagee cites the 1977 example of Linda Lovelace, a Maliseet woman who challenged the Canadian *Indian Act* regarding loss of residency status because of her marriage to a non-Native man. The U.N. ruled that Canadian law contravened her right under the Covenant on Civil and Political Rights. In 1985, Bill C-31 amended the *Indian Act* allowing status for Native omen and their children and returning control to the bands regarding issues of membership (1994: 196).

11 Brush provides an interesting discussion of the appearance and ultimately politicized meanings of the term *indigenous* after 1980 (1993: 658-650). A U.N. press release recently stated: "Regarding the concept of 'indigenous peoples' the working group took note of the general consensus . . . that it was not yet possible to arrive at a universal decision" (GA/SHC/3442 1997). In the same session representatives from the U.S.A. "recognized the significance that indigenous people attached to the term 'peoples' . . . [stating] that the term would be conditionally accepted provided that its use was not construed to include rights of self-determination or any other rights that might attach under international law" (ibid.).

12 Two cases from Australia deal with issues of copyright and the use of indigenous representations. The case of Australian Aboriginal artist Terry Yumbulul revolves around the issue of "statutory recognition of Aboriginal communal interests in the reproduction of sacred objects" (Golvan, 1992: 229). His work, titled "Morning Star Pole," was on permanent display in the Australian Museum in Sydney. A court case was initiated when a reproduction of the work appeared on the commemorative ten-dollar note issued by the Reserve Bank of Australia (ibid.: 229). Yumbulul argued that the work was not a sculpture but a sacred object where the authority to reproduce was held by tribal owners, in this case the elders of the Galpu clan. The court action was unsuccessful for Yumbulul who had legally agreed to conditions of the exhibition. Ironically, in the eyes of the legal system, the artist was *protected* as the sole creator and copyright owner of the pole (ibid.). In another Australian case, artist John Bulun Bulun brought an action for infringement of copyright against a T-shirt manufacturer who was reproducing his paintings without permission (ibid.). This litigation was successful. Reverberations were seen in the response by the tourist industry that initially withdrew articles of unauthorized Aboriginal imagery and then proceeded to create their own versions of Aboriginal art (ibid.). Perhaps most interesting in Golvan's article is his statement that "The works of Aboriginal artists have become our national artistic symbols" (ibid.: 227).

13 The title of a paper by Mark Tremblay (1982). He addresses the state of anthropological practice within a global context critically assessing dominant scientific discourses.

14 The veracity of this situation was recently impressed upon me through a reading of Morgan's *Indian Journals 1859-62* (White, ed., 1993). He inscribed a large body of *raw data* including toponynms; movements of village sites; clan territories; indigenous legal and economic systems; and systemic corruption on the part of government structures. Much of this material did not appear in Morgan's published works and stood well outside of his evolutionary theoretical scheme.

15 A legal obsession with the written word is evident in litigation that involves the admissibility of oral tradition (*Delgamuukw v. the Queen*, 1987; Clifford, 1988: 277-349). At issue are Western distinctions between written and oral traditions; mythology and history. Lincoln outlines three important criteria of "past oriented narratives" labeled history. First, these must have "a numerically specified position in a sequence of elapsed time." Secondly, the narratives require "written sources to attest to them" and lastly "their only significant actors are humans" (1989: 24). Mythology then, as some oral traditions are categorized, is suspect in its truth value through omission of these criteria. On December 11, 1997 the Supreme Court of Canada addressed these assumptions in the appeal of *Delgamuukw v. British Columbia*: "The Aboriginal tradition in the recording of history is neither linear nor . . . does it assume that human beings are anything more than one . . . element of the natural order. . . . It is less focussed on establishing objective truth. . . . The difficulty with these features of oral histories is that they are tangential to the ultimate purpose of the fact-finding process at trial—the determination of the historical truth" (Delgamuukw, 1997).

16 Three respondents pointed out that the problem of the disposition of field notes is related in part to the way in which I have worded the question in that the protection of anonymity is difficult to maintain and carries with it potential consequences. No respondents chose to be anonymous.

17 An Australian court decision (*Foster v. Mountford*, 1976) addressed the tension between career and ethical choices. The judge ruled to ban the sale of a book portraying sacred knowledge shared by elders with an experienced anthropologist. At issue was the scholar's awareness of the restricted nature of the information given his extensive experience in the community (E/CN.4/Sub.2/1993/28: 22).

18 Within the *Canadian Copyright Act*, the "nature" of copyright rests in satisfying three conditions: originality ("the work must originate from the author; must be the product of his labour and skill; and must be the expression of his thoughts"); tangibility (expression of a work in material form, capable of identification and of a permanent nature"); and expiration (this "limits protection to a specific term") (Callison, 1995: 174-176).

19 The discourse is apparent in an article from the *Vancouver Sun*, Saturday, November 25, 1995. In it, President Strangway's fund-raising capabilities are praised in the midst of criticisms regarding the "corporatization" of academic institutions in danger of becoming part of the "industrial-university complex" (A20). A pamphlet entitled "The University of British Columbia Must Prepare for the 21st Century" recently appeared in the boxes of faculty and graduate students. Labeled "vision consultation"; this pamphlet outlines the need to consider "investment in the future" and develop "research partnerships" with industry

and government. The saleability of *knowledge* is a given, as are the "challenges" of deteriorating facilities, faculty numbers and quality of education (1998).

20 Customary law in many cultural settings stipulates who is eligible to hear and perform certain "messages" (Vansina, 1985: 98).

21 Currently, *history* is being made through treaties with First Nations peoples in British Columbia. Under the heading "Cultural Artifacts and Heritage Protection," the Agreement-in-Principle in Brief of the first of these treaties, "Nisga'a Treaty Negotiations," reads: "The Royal BC Museum and the Canadian Museum of Civilization will return a significant portion of their collections of Nisga'a artifacts to the Nisga'a. The museums will retain collections of Nisga'a artifacts for the public (Government of Canada, Province of BC and the Nisga'a Tribal Council, 1996:6). The universalism implicit in this issue deserves critical examination that would, I think also question the utility of anthropological knowledge.

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