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**The Anthropology of Personal Identity: Intellectual
Property Rights Issues in Papua New Guinea, West Papua
and Australia**

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The Anthropology of Personal Identity: Intellectual Property Rights Issues in Papua New Guinea, West Papua And Australia

Introduction

Intellectual property rights (IPR) are an important consideration in contemporary ethnographic inquiry. Current forms of debate include discussions of the kinds of intellectual property that can be afforded protection and whether such protection is able to reach across different jurisdictions. Another point is that IPR concerns have undergone considerable evolution over time as have their close relatives, cultural heritage protocols, with important implications for dealing with cultural/intellectual property that may have been accumulated in different eras.

In this paper I discuss large-scale genealogical work at three projects in Papua New Guinea, West Papua and Australia.

Broadly, I will consider three questions:

1. In what respects is genealogy intellectual property and, if so, who owns it?
2. What were the regimes of permissions that permitted the collection of genealogical knowledge in each of the three cases?
3. What duty of care do collectors/curators of genealogical knowledge have in respect of preservation and safeguarding against improper use?

Case 1

Landowner Identification in the Lihir Group of Islands, Papua New Guinea

In the decade of negotiations for mine agreements at the Lihir gold mine in Papua New Guinea, a socio-economic study (Filer and Jackson 1989) identified various aspects of landowner participation in the project as the key social impact issues, notably in the areas of employment, small business, mine spin-off contracting, and royalty distribution. The landowner negotiators added a desire for equity in the project, to be owned by 'all Lihirians'.

Three parallel debates that had started in the late 1980s gave rise to the regime of permissions that allowed the collection of personal identifying information at Lihir on a large scale.

The first was an internal debate among Lihirians on how to capture mine benefits in a way that would develop their island. This was energised by a 24-hour visit to Panguna in late 1988 by Lihir landowner leaders, together with Colin Filer and Kennecott Community Relations staff, during which the whole party was given a vigorous lecture by Francis Ona at New Daperu village on the pitfalls of mining.¹

The second was the discussion instigated by Colin Filer in academic circles over the vulnerability of Melanesian societies to 'social disintegration' under the stress of mining, characterised by such things as failures of benefit distribution, which was what he said had occurred in Bougainville when the Panguna mine closed in 1989 (Filer 1990; May and Spriggs 1990).

¹ Ona was then about three weeks away from initiating what would become the Bougainville rebellion.

The third was the wider public debate in Papua New Guinea about the causes of the Bougainville crisis and possible ways of averting similar problems in the future. It was this debate that prompted the Kennecott-Niugini Mining and the national Department of Mining and Petroleum to jointly seek much higher quality social mapping coverage of the Lihir Group than had been expected at previous mining operations, for example at Ok Tedi and Porgera. Colin Filer and I, as staff members at the University of Papua New Guinea, became involved in providing this coverage. At the end of 1991, Filer mapped and collected oral histories for the 400 or more *ririh*, or matrilineage men's house ('haus boi') hamlets – average population 19 people – in the four inhabited islands; and over about six months, starting in early 1992, I conducted a full genealogical census of the island group.

Our initial purpose was to gain an understanding of the Lihirian clan system and to achieve a representation of what, in Native Title work, is called 'connection' between the Lihirian matrilineage groups and land likely to be taken up for the mine for which monetary payments would be due.

It is not the case that work similar in nature and scale to this had never been attempted on this scale in Papua New Guinea before. Village census books and other forms of civil registers had been well known to PNG villagers since the 1920s – even earlier in some places – and a medical surveillance system at Tari in the Southern Highlands Province had been operated on a continuous basis by the PNG Institute of Medical Research for a number of years, covering about 30,000 people.

At Lihir, special purpose registers kept by the Catholic Mission were quite familiar to the islanders: the 'Liber Baptizatorum', 'Liber Matrimonium' and 'Liber Defunctorum' (registers of baptisms, marriages and deaths) started in the period 1932-34 when there was a mass baptism into the Catholic faith of most of the then 3000 islanders. Even during the hiatus of WWII, when the German priest at Lihir was executed by the Japanese, local catechists and mission teachers kept a record of births and deaths (Hardy 1954), and the Catholic registers have been kept up-to-date continuously until the present day – since the 1980s by Lihirian priests.

However, it is true to say that census, personal identifying information, oral historical information and genealogy had never been combined on such a scale before. At the outset, the Lihir database held information for just over 7000 residents, 1400 non-residents and 2240 deceased people in earlier generations. The database became 'live' in mid-1997 and has been operated by a Social Research and Monitoring section within the mine's Community Relations office, staffed by Lihirians, ever since. By mid-2004, the total number of residents had risen to over 12,800.

As I said, social mapping at Lihir was originally aimed at understanding the Lihirian clan system. One of the first analytic requirements was to be able to proof-read the lists of people self-identified as the owners of particular land blocks in the mine lease area prior to landowners and the company entering into agreements for the purpose of designing a system of paying benefits. However, this need faded away as politics took over and male 'block executives' (in this matrilineal culture) appropriated this task to themselves. Instead, two other uses, politically important to Lihirians, continue to protect the census project from the expediency of the mine's operators.

The first is to police a 'Lihirians-first' employment policy at the mine and among the many subcontractors, with exemptions for skilled jobs.² A large number of Lihirians returned from other parts of Papua New Guinea when the mine opened, and many now have work. But several thousands of more tenuously related people from the adjacent island groups of Tabar and Tanga, and from the New Ireland mainland, who now pay extended visits to Lihir, are not welcome in most people's eyes. LMALA, the Lihir Mine Area Landowner Association, introduced a policy in which job applicants are sent to the Community Relations office to be looked up in the database and be validated as Lihirians. Many indigenous groups would find it strange to have to rely on

² In 2003, 38% of the total workforce was made up of Lihirians, and 100% of apprentices (Lihir Gold 2003).

technical means to identify group members; but here the numbers involved are large, and Lihirians know all too well that the problem is not so much saying who is ‘in’, but one of saying who is ‘out’, and of operating the policy without breaching the courtesies of kin relations.

The second politically important function follows from the 1995 mine agreement which created shares in the mining company to be held in trust ‘for all Lihirians’, but which did not precisely define ‘Lihirian’. (Is it all those with a Lihirian grandmother? Is it membership of a clan, however acquired? How are the children of Lihirian men by non-Lihirian wives to be treated?) The company’s first dividend was due in mid-2003, and by this time a guideline answer could be given with custom reports from the genealogical database listing everyone over the age of 18 at the 400 or so hamlets who were identified with one of the 35 or so Lihirian clans. Nonetheless, it took a further twelve months to finalise the division of the total dividend and agree on the means of distribution (N. Bainton, pers.comm.)

Case 2

Household Census and Identification of Amungme and Kamoro Families in the Freeport Contract of Work Area, West Papua

Between 1996 and 1998, Chris Ballard and Glenn Banks worked with staff at Cendrawasih University on the ‘UNCEN-ANU Baseline Studies Project’ in the vicinity of the Freeport mine in West Papua Province, Indonesia (Banks 1999; Ballard 2001; see also Banks and Ballard 2003).

The project came about as a result of a belated realisation by the mining company, Freeport-McMoRan, that it might need to alter the way it related to the traditional owner communities, the Kamoro and Amungme, near its facilities. While Freeport-MacMoran paid for the work to be done, the project was detached from any local institution or specific office charged with relations with the communities, because it had not been the practice of Indonesian authorities to recognise ‘land owners’. Banks (1999: 1) notes, it was ‘notable for the absence of any institutional support or framework: it was not linked directly with any other government, company, or community planning process’.

A principal task of the field team was to conduct household survey and social mapping work in the Kamoro and Amungme villages as part of a comprehensive social development assessment. I had little to do with this phase of the work but was brought in after it had been done to create two Community Express databases: one for Kamoro, with 3675 people, and one for Amungme, with 2708 people.

A key question put by the team to community representatives in the design phase was whether they felt it safe or appropriate to collect personal identifying information. As is well known, human rights abuses are a key concern in this area, and as many as 200 people from the two communities are believed to have disappeared or been killed for political reasons between 1975 and 1997 (Ballard 2003: 27). The question was whether survey forms or indeed computer files might not fall into the wrong hands and be used to perpetrate further killings or disappearances.

The reply was that such things were likely anyway, and recording people’s names would at least mean that there was independent proof that the victims had really existed.

Suffice it to say that no reports containing names have been released by team members and the databases that do contain them have not been set up – indeed cannot yet be set up – at the headquarters of the community organisations. Ballard also advises that repatriating information on, say, the make-up of a clan to its own members would be unsafe: the risk of betrayal cannot be ruled out even within the groups.³

³ Obviously in completely different circumstances, this kind of internal betrayal was brought home to Australians recently when the leaking of the identities of two police informers in the state of

Case 3

Genealogy and Native Title Claims in the Torres Strait, Australia

Genealogy existed as a branch of heraldry until the ‘Cambridge Expedition’ to Torres Strait in 1898. W.H.R. Rivers (1908) initially collected genealogies during a four month stay at Mer to look at heritable traits like colour blindness, but soon realised their wider sociological value. In a shorter stay at Mabuiaig (Rivers 1904), he did a somewhat better job, and later collected genealogies among the Toda and at Simbo in the Solomon Islands.⁴ The Torres Strait genealogies are not particularly well known to contemporary anthropologists, let alone lay people in Australia, but they have extraordinary national importance.

Australia has only two entries in UNESCO’s *Memory of the World Register*: Cook’s *Endeavour* journal and the papers of Eddie Mabo, both held by the National Library (UNESCO n.d.; Mabo 1943-1992). The Mabo papers include Eddie Mabo’s own Meriam genealogies but also his copies of Rivers’ 1898 genealogies of Mer.

Rivers’ Mabuiaig genealogies are arguably even more significant because of their greater length. I have been able to work back from individuals in them for whom birth and death dates are now known, and I find that Rivers’ genealogies put names to over 35 Australians born prior to 1788 and more than a dozen prior to Cook’s passage of Torres Strait on 22-23 August 1770, where Mabuiaig is likely to have been one of ‘the most Northernmost Islands we had in sight’ from the deck of *Endeavour* as it passed to the south through the channel that now bears its name.⁵

Also at Mabuiaig, one of the expedition’s several literate informants, Ned Waria, completed a 281-page manuscript of folklore and genealogical recitation on his own initiative and in his own language *after* the expedition had left, and had it posted to Haddon in Cambridge by J. Cowling, a local trader.⁶ This was partly translated by the expedition’s linguist, Sidney Ray, and published in the expedition’s reports (Waria 1900; Ray 1907). Waria’s Manuscript remains a strong candidate to be Australia’s first book-length treatise by an Indigenous author.⁷

Victoria led to their assassination; see ‘Police Integrity on the Leak of a Sensitive Victoria Police Information’, Legislative Assembly of Victoria, Daily Hansard, 24 February 2005.

⁴ The Simbo genealogies were recently rediscovered at Cambridge by Tim Bayliss-Smith (pers. comm.)

⁵ There are other examples in south eastern Australia – for example the Timbery family of La Perouse area of Sydney, who are descendants of Timbere of Botany Bay (e.g. ‘A tale of two histories’ *Sydney Morning Herald* 17 January 2005) – but the Mabuiaig genealogies trace a whole community back to this period.

⁶ J. Cowling to A.C. Haddon 14 Jan 1901 ‘By this mail I am posting a packet from ‘Waria’ (alias Ned and now ‘mamoose’ of Mabuiaig) he has taken great pain with it.’ Haddon sent him back a telescope and photographs.

⁷ Ray (1907: 190) did not mistake its significance: ‘After our return to England we received from Waria a voluminous manuscript in the Mabuiaig dialect, which is in many ways of great interest. It is the first literary composition of importance produced by a member of the Papuan [sic] race’.

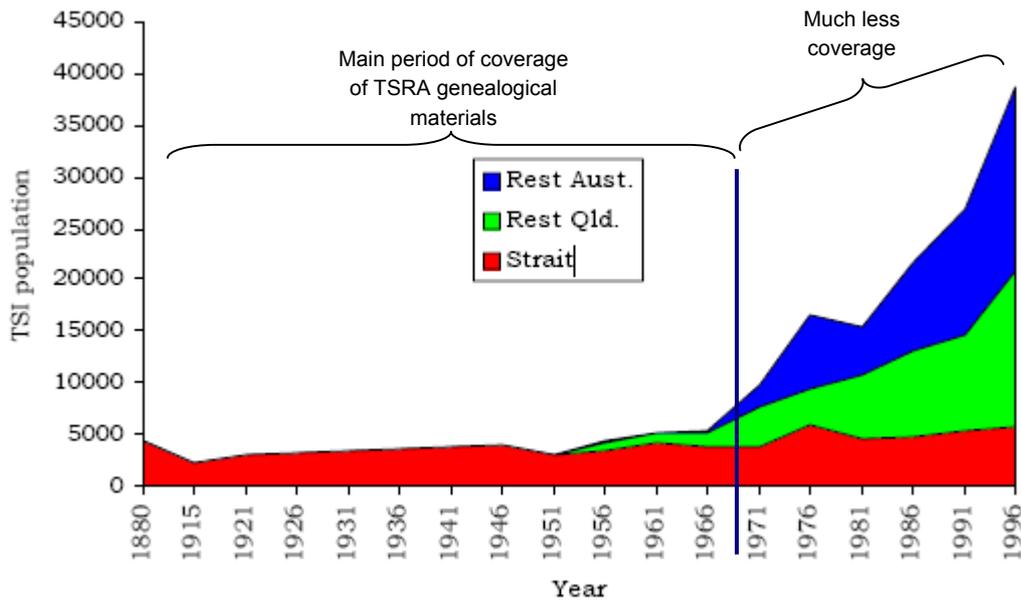


Figure 1. Torres Strait Islanders: Geographic distribution 1880–1996 (Sanders & Arthur 2001). Note that because TSRA genealogical materials include comparatively few people born after about 1970 in most communities, the coverage of the genealogical database is best in the lefthand section of this chart. There is only limited coverage of the righthand section.

After the Mabo case in 1992, and the passing of the *Native Title Act* in 1993, what are known as ‘consent determinations’ of Native Title have been made for most of the remainder of the land areas of Torres Strait. Preparing Native Title connection reports between 1994 and 2001, nine anthropologists assembled fourteen sets of genealogies, covering about 11,750 individuals, for various former or existing inhabited islands. The genealogies were submitted in confidence to the Native Title Services office in the Queensland Government as appendices to the connection reports. None of the material was made publicly available at any time.

I was Senior Anthropologist at the Torres Strait Regional Authority, 2001–2003, with a brief to organise anthropological materials for the Torres Strait Regional Sea Claim. I spent a part of this time consolidating the now sixteen sets of genealogies into a Torres Strait-wide database and adding additional authenticating information, such as that in written sources like the mid-C20th notebook of Eseli Peter of Mabuiag, recently published by the University of Queensland (Eseli 1998), various birth registers,⁸ the Australian War Memorial Nominal Roll for WWII, and information found in the inscriptions on more than 1500 Islander tombstones in cemeteries in Torres Strait and at towns in mainland Queensland. In addition, I did further original research for outstanding Native Title claims in the Western Torres Strait and on land disputes at Mer (Burton 2004), each of which included further investigation of genealogy.

⁸ Notably the Murray Island Register; the Rev J.E. Done’s list of baptisms 1915–26; the Catholic Index of Baptisms, Our Lady of Sacred Heart, Thursday Island; a ‘Births Register copied from an old book kept by Namoa mamoo’s’ privately owned at Badu.

By these means I was able to add about 1700 people to the consolidated genealogies without making a significant extension to more recently born descendants of existing families (see

Figure 1).⁹

In What Respects is Genealogy Intellectual Property, and Who Owns it?

The first question to answer is what kind of a thing is genealogical knowledge? A possibility is to think of it as cultural heritage and seek guidance in cultural heritage protocols, but this is problematic because the relevant cultural heritage legislation is not conceptually advanced. In Queensland, the *Torres Strait Islander Cultural Heritage Act 2003* (Qld) promisingly states (s23):

A person who carries out an activity must take all reasonable and practicable measures to ensure the activity does not harm Torres Strait Islander cultural heritage (the ‘cultural heritage duty of care’).

But heritage is largely defined only in terms of human remains, movable objects, and sites, and protocols for protection are merely aimed at property developers. Worse, other than human remains to which Islanders have a familial connection and sites or objects transferred to Islander ownership, the Act claims that ‘otherwise the State owns Torres Strait Islander heritage’ (s20.2), even when it is ‘*evidence* that is Torres Strait Islander heritage’ (s20.3, my emphasis). These ideas are archaic, though the ‘cultural heritage duty of care’ may come in handy later in my analysis.

Debates about intellectual property rights (IPR) have become much more sophisticated in recently years, and what might be term *second generation cultural protocols* have emerged as a result of new international initiatives. Where previously it may have been sufficient to consider the permissions granted to the anthropologist by community elders, a wider range of issues has come to the fore (e.g. Hirsch and Strathern 2004).

In particular, the World Intellectual Property Organization (www.wipo.int) has brought the concepts of ‘traditional knowledge’ (TK) and ‘traditional cultural expressions’ (TCE) into the mainstream discussions of intellectual property and its protection (WIPO n.d.a., n.d.b) and to which customary law is likely to apply. Janke’s study of eight local cases has recently shown the relevance to Australia (Janke 2003).

In these discussions, a great deal of space is allowed for what indigenous people *know* and what they *make* or *do* in being the owners of intellectual property. Standard examples are the ownership of traditional ecological knowledge and traditional cultural expressions like artwork and dance performances. The drawback is that the personalising knowledge of *who people are* has hardly been discussed at all.

Some genealogical knowledge, at least, is definitely intellectual property. In Torres Strait, genealogy begins in the realm of ‘traditional folklore’ (e.g. Haddon 1904; Lawrie 1970), a term interchangeably used by WIPO with ‘traditional cultural expression’ as basic forms of indigenous intellectual property. In fact the latter term is apt, because folkloric genealogy often has a strong ‘performance’ aspect and, when expressed in written form like Waria’s Manuscript, it can form a ‘recital’ on paper.

The folkloric period shades into a following era where new forms of ‘personalising cultural expression’ such as tombstone inscriptions begin to augment oral knowledge. Tombstones have an ambiguous status as intellectual property: on the one hand they are on public view – especially when sited in municipal cemeteries – but on the other, they are so distinctive in design, they constitute a ‘traditional cultural expression’ that cannot readily be appropriated by others. For example, it would certainly be ‘odd’ for non-Indigenous people to erect this style of headstone over the graves of their own relatives.

⁹ I discussed aspects of the work at a workshop held at the Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 5-6 October 2002 (Burton 2003).

In the contemporary era, Islanders are known, like everybody else, from a multitude of non-traditional sources and have supplementary identities as war veterans, nurses, performing artists, footballers, and so on. And like everybody else, the identities of living Islanders are subject to privacy considerations, throwing a protection of a different kind over the end points of ancient lineages.

I suggest that considerations begin with the following.

More than ‘the common knowledge of elders’?

The genealogies of a single residential community are likely to have come from among elders who are in regular contact with one another, regardless of whether they actively share what they each know with their fellows, keep it secret, or follow customary conventions in passing it on to a specially qualified subset of the community. In essence, there is a direct mapping of knowledge from informants to notebooks, tapes or other media that is easy to deal with. Indeed, wherever I am, protocols probably exist that set out where I must lodge copies of research materials.

But the situations I have described are no longer like this, because the mapping of knowledge from informants to items of knowledge in a much larger database is a great deal more complex.

Let me be careful to stress that a rule of thumb is that all informant knowledge should be conserved. Having said that, informants provide conflicting information. There are two schools of thought on this. One is that genealogical interviews are ‘texts’ that we cannot correct on points of fact. The other is that, if an informant says ‘my neighbour went to the city and died there in 1957’, and we go to the city cemetery and find that the fellow was fit and well until 1962, it is valid scholarship to set aside the earlier information and use the later. In fact, we may get into trouble if we do *not* use the later date if the fellow’s wife went on having children after the year of her husband’s alleged death. Also note that I said ‘set aside’, not ‘discard’ – there may well be an interesting reason for the discrepancy.

As the number of sources contributing information to the whole grows, the situation gets increasingly complex and, while we can probably find a technical means to extract the source of every snippet of information, the useful purpose served in being able to do this gets less and less evident because a bigger picture is being built up.

A first question I want to consider, then, is whether, in a very large database, a corpus of folkloric information has been assembled that goes ‘beyond the common knowledge of elders’; that is to say, that it now transcends in complexity or coverage what any one elder, or small group of elders who habitually share or discuss traditional folklore, could be reasonably expected to *perform or recite* as a ‘traditional cultural expression’.

The answer in the Torres Strait and Lihir cases is that it is almost certainly so. The information does not stop being made up of ‘traditional cultural expressions’ but it now has a region-wide or ‘culture area’ aspect to it.

In the Freeport case, the corpus of information is too great for any small group of people to recite, but very much less information was collected on past generations, and there are no attached documenting media. It may not be strictly ‘beyond the common knowledge of elders’, but since elders fear for their survival, we can perhaps say that the reasonable expectation that culture holders will be able to recite it falters on these grounds.

In using the words ‘recital’ and ‘performance’, I have carefully avoided the terms ‘know’ and ‘knowledge’. Of course culture holders ‘know’ their culture; the operative criterion I am looking for is ‘Is it still feasible for this body of traditional folklore to be performed or recited, or is it too complex, or do other factors like the local human rights situation make it impossible?’

Comparison of IPR Regimes of Permissions in the Three Cases

The second question is: What were the ‘regimes of permissions’ given in the three cases? Each illustrates a quite different context in which personal information of an essentially identical nature was collected. However, all are distinguished from the normal run of anthropological work in that a considerable amount of information gathering was commissioned by the communities themselves.

Permissions at Lihir

At Lihir, I was not present at discussions mooted the need for the project before it began, but there was never a time when the census project was not enthusiastically embraced – indeed taken for granted as a service provided to the island by the mining company and/or the government – by villagers, members of LMALA (Lihir Mine Area Landowner Association), and local and provincial government officials.¹⁰ As I have discussed, it is a reassurance to most people that the genealogical database is present to prevent outsiders jumping the employment queue and to provide a means of distributing at least one of the mine benefits fairly.

In reality, though, ‘reverse permissions’ are more illustrative at Lihir than permissions. For example, Social Research and Monitoring staff have often wanted to conduct a thorough census of the supposedly unwanted migrants, who are now several thousand in number. Practical reasons have been advanced: it is necessary to know what pressure they are placing on services, how they have followed custom to seek to co-reside with their hosts, what rights have been given them where they live, what part they play in disputes or law and order problems, and so on. A cursory survey has been done, but it has proven politically unacceptable to do data entry with the *names* of migrants even when there is a likelihood they will fit into Lihirian genealogies.

The usual reason cited is that, once names have been entered, automatic access to work and benefits will follow. This seems naïve because if they are pointed out as migrants, how could any mistake be made?

I suggest a more sophisticated way to look at this is that since knowing about people personalises¹¹ them, the key anxiety is that knowing about migrants would alter their status as marginal, shadow, not-real people to that of ‘real people’. The problem is that, unlike Lihirians who are ‘legitimate’ as well as ‘real’, this would stand to add ‘illegitimate, false people’ – not data entry errors but literally ‘false people’ – to the collectivity of identified beings that make up Lihirian society. In consequence, this would impact on the coherence of that collectivity, devaluing it as a corpus of traditional knowledge.

Permissions at Freeport

At Freeport, Amungme and Kamoro leaders thought about the potential for personalising people in their communities along similar lines. But in this case, the regime of permissions was occupied with consolidating their identities as marginal, shadow, unrecognisable people as ‘recognisable, real people’. It would go too far to say that the further step to becoming ‘legitimate people’ could be taken because, as Banks noted, the project had no local institutional anchor other than what was created as part of the consultation process. Indeed, the genuinely held fears that hidden hands could misappropriate the information means that practical expressions of legitimacy – meaning here legitimacy in the eyes of local institutions of the State – could not be an immediate outcome.

¹⁰ Only at one hamlet in a corner of the main island far from the mine did the residents decline to be interviewed during the initial rounds of interviews, 1992-94. Adherents of a breakaway religious sect, possibly observing that census forms had numbered margins, equated the association of names with numbers as fulfilment of prophecies made in the Book of Revelation.

¹¹ It is in the sense conveyed in this paragraph that I earlier used the adjective ‘personalising’: genealogy is revealing itself here as knowledge that is so powerful it ‘makes’ people.

On the side of positive permissions, a set of reporting protocols saw that the information collected by the research team was to be controlled by community representatives:

We made it clear to the company, who were funding the work, that community participation in, and indeed control over, the project was non-negotiable. The community representatives were consulted over the project design, at least one community-designated assistant accompanied us at all times in the field, they were briefed at the end of each period of fieldwork, and received a report from us for their consent prior to any work being discussed with, or handed over to, the company. They also had a veto over any aspect of the work, a right which they exercised on several occasions. Given the context of the project, there was ethically no other way of working in the area (Banks 1999: 6-7).

Permissions in Torres Strait

In Torres Strait, there are several periods of ethnographic investigation to consider. The first period is that of Alfred Haddon, W.H.R. Rivers, and their Cambridge colleagues in 1898, together with the people Haddon corresponded with by mail, like the government teacher at Mer, J.S. Bruce, and the trader J. Cowling at Mabuiaig.

A second phase of ethnographic and historical inquiry and cultural studies began in Torres Strait in the 1950s and 1960s, notably with the work of Beckett (1963), Lawrie (1970), and Laade (1971). A flood of studies dates to the 1980s and 1990s, during which decades Islanders began making a significant impact in representing Island culture for themselves.

Finally, as noted, post-Mabo Native Title investigations commenced in 1994 and continue today.

What can be seen is certainly an evolution of the regime of permissions governing the collecting of personal information. It starts, apparently, with the uninformed compliance of Haddon and Rivers' informants in 1898. I add 'apparently' because of two conflicting representations of the relationships. On the one hand, Rivers (1901: 7) discusses the advantage, from the point of view of bias in psychological testing, of having subjects who are *unwissentlich*, or 'without knowledge', and lets out that he paid adults a stick of tobacco for each morning's work (1901: 5). This conforms with a stereotypical view that informants of the period, willing as they might have been, were not in a position to give informed consent.

But on the other hand, Ned Waria's extraordinary achievement in completing a 281-page work of his own shows quite the opposite; indeed, it goes well beyond informed consent to an extremely modern version of collaborative cultural study.

In recent years, a good number of Islander scholars and community leaders have been to Cambridge to examine the Haddon collection, and while only one family that I know of in Torres Strait owns a full set of the now rare six volumes of the *Reports*, virtually every family on Mer in 2004 possessed photocopied sections of Volume 6 (Haddon 1908), locally known as the 'Giz Book',¹² which deals with their island. Meriam, locked in some 50 land disputes with one another, litigate using Rivers' genealogies:

'Q. Have you got any document to give to the panel?

A. Yes, have ... Family Tree lineage from Haddon's report and other documents ...'

'Distribute Exhibit 1. [Tables X & Y] from Giz Book [Haddon].'

'The Good Lord knew there will be liars and land stealers in the last days, that's why he sent Alfred Haddon the Anthropologist to Mer in 1898 to record ... the valuable Meriam genealogy.'

¹² From *giz*, 'root, base, origin', and by extension, 'ancestor' (Beckett 1963: 19).

‘John Haddon’s Giz Book was written during the time when [X] was still alive, how come [Y] never challenged his authority of the ownership ... then?’

(From transcript of a community-held Land Dispute Tribunal, November 2003).

If ‘informed consent’ was problematic in 1898, Meriam appear to have given their retrospective endorsement for the fieldwork.

IPR Obligations and the Cultural Heritage ‘Duty of Care’

The third question is: What duty of care do collectors/curators of genealogical knowledge have in respect of preservation and safeguarding against improper use?

Consultative problems

A standard IPR obligation is that anthropologists must acknowledge the owners of knowledge and make their best endeavours to see that their writings and reformulations of it are repatriated to them. While we all know that there are practical problems where, for example, people have no libraries to safely house papers and theses – or, at least, not right in the field area – large-scale genealogical information poses new problems. A first point is that the interconnectedness of the information may now render it meaningless to try and ‘repatriate’ the information that an elder originally provided, for the purposes of consultation. For example, where a person originated in one elder’s community, but lived and died in the community of another, what part of the traditional folklore ‘belongs’ to which elder?

A second issue is that documentary research inevitably turns up what may be termed ‘documenting’ and ‘emergent’ information. Examples of the former are dates of birth taken from baptismal registers: such documenting information is normally uncontroversial in itself. Emergent information, on the other hand, is likely to come from a deeper analysis of the registers. An example might be the discovery of dates that contradict the remembered order of birth in a family; or a name known from the 19th century appears to be that of a person of the opposite sex to that previously supposed; or a woman was too young or too old to be a person’s mother.

Emergent information poses a problem in that it has a floating status until examined by elders and (i) endorsed as filling a former gap in knowledge, (ii) rejected as conflicting with traditional knowledge, or (iii) placed on hold pending further inquiries.

In turn, floating information that cannot be quickly resolved may have a flow-on impact to the other parts of a genealogy to which it is connected.¹³ In the worst case, contradictory hypotheses about connections become expensive political problems; most anthropologists in Australia are familiar with controversies about the Aboriginal status or otherwise of particular forebears, where descendants stand to gain or lose Indigenous entitlements like Abstudy, State government cultural funding, housing assistance, etc.

A guide response to both issues is that a new responsibility arises to meet with elders on a regular basis and to keep all parties better informed about the status of the information as a whole.

In Torres Strait, only some communities are aware of the need to do this, and because of legal privilege issues, *no meetings have yet been held to specifically deal with this subject.*

¹³ For a published example in Torres Strait, see the discussions of early Mabuig genealogy in Eseli (1998).

Ownership

What ownership issues are likely to arise?

If the question at (a) is answered in the affirmative, and a substantial amount of the ‘emergent’ knowledge discussed at (b) is endorsed (or has a strong likelihood of being endorsed), new questions would arise were original contributing elders to exercise their option to call back their sections of the corpus of knowledge and put them in their own keeping places. (‘Can we have all our stuff back? We want to keep it in our own office.’) This could now only be done for the unique parts of the knowledge that a group of elders might have contributed. Of course, original notes, tapes, etc could be returned, but it would be a difficult matter to ‘forget’ folkloric clues like the origin of shared ancestors or mundane things like the similarity in age of two deckhands on a lugger who came from different islands. Worse, strict compliance would result in the loss of the ‘emergent’ knowledge.

Who owns the emergent knowledge? Individual owners cannot be found for it with the same certainty as could be done for the original parts. Clearly it ‘belongs’ to the people in the culture area, but it would appear to cross-cut the permissions that were negotiated for the first round of data collection. If it can be considered a product of scholarship, perhaps it lies in public ownership. On the other hand, it is unlike conventional ethnographic scholarship, because if the content is all genealogical in nature, it cannot lie with certainty in the public domain. The answer may be that a new form of ‘commons’ ownership has come into existence.

In reality, the question ‘Whose intellectual property is the new information?’ is not simply answered at this stage.

Preservation and the need for ‘unbroken sight’

What preservation issues are likely to arise?

Until the field of IPR matures further to thoroughly debate the issues I have raised, I suggest that the precautionary response is for technical curators of genealogical knowledge to assume a heightened responsibility to keep it in good order, in line with the directive above to pursue a ‘cultural heritage duty of care’. In a workplace this means, at a minimum:

- maintaining the information with the best integrity technically possible;
- ensuring that untrained users are not allowed access, even if they are culture holders;
- ensuring that anyone handling or using technical expertise to move the database from one storage medium to another is aware of the issues that have been raised here.

The key criterion is that it must be possible to guarantee ‘unbroken oversight’ wherever the materials or media are kept and however they are stored. After considering what I meant by this, I received the worst possible illustration of the opposite. I was contacted from a workplace where an unlabelled backup disk had been found containing one of the three databases I have mentioned here. I was able to determine that an office manager had instructed an IT assistant to make the copy, but when they realised that they could not ‘play’ the disk with regular office software, they lost interest and discarded it.

This unthinking behaviour, so clearly breaching a ‘cultural heritage duty of care’, is exactly what must never happen. It illustrates a new problem faced by anthropologists who enter new kinds of working environments. It proves very difficult indeed, and it is sometimes impossible, to establish that relationships established with community members in the course of work lie outside the command structure of a hierarchically organised workplace and must be permanently privileged. In the example I have just given, the genealogical database was treated like an email or a policy document owned by the employer, and its privileged status was ignored.

Conclusion

Melissa Demian (2004) explores a range of situations in which a property right is asserted because of the association of particular things with folkloric knowledge. She gives the example of a fruiting tree that elicits ‘the history of one or more lineages who have resided on [the] land’ whenever anyone catches sight of it (2004: 61). I find genealogical structures to be like this; they are intellectual scaffolding upon which personal and group histories are hooked. Traversing the scaffolding – reciting the genealogies – enables the reciter to access these histories. As collectors or curators of genealogies, I feel what we are doing is maintenance work on the scaffolding, which is essentially a positive thing. Occasionally we can establish or repair bridges between two or more scaffolds and restore to reciters access to histories which have been blocked off for some time.

However, as bright as such things can be, and while it is not hard to exercise the part of a duty of care that comprises looking after the physical materials indefinitely, we fall short in the critical area of maintaining unbroken oversight or establishing more formal protocols that can create institutional ways of achieving it.

At Freeport, the ANU-UNCEN team was successful in negotiating privileged status for its research results. But here too, time has passed and the dependence of the project on the whims of the mining company’s management mean that the results are left in limbo, as is the genealogical census. Freeport-McMoRan’s web site is now showing that a new group, the International Center for Corporate Accountability, will be auditing the ‘Social, Employment, and Human Rights Policy’ the company says it has adopted, and that work to ‘benchmark [the] guiding principles’ is being done. Exactly what this means is unclear, but we can say that the ANU-UNCEN work has been shelved, and the only means to perform the unbroken oversight role is to withhold the information indefinitely, as we have done.

At Lihir, the mining company has the characteristics of all mining companies: constant staff turnover means that I have dealt with five Community Relations managers so far, short-term projects are promoted at the expense of long-term ones, and there is relentless pressure to reduce costs. In short, none of the prerequisites exist for me to maintain unbroken oversight here either. A trainer I recommended to the company visits every few months and remits me backup CDs once a year, but I am physically too distant from the informants to be much help.

In Torres Strait, I am considering ways in which I can maintain oversight, largely to install safeguards against staff turnover in the hosting organisation from having the effect of placing the organisation in breach of its own protocols. I recently did a short consultancy to audit genealogies collected up to 2001, and my report on this drew attention to some of the points I have raised here. At the AIATSIS Workshop on genealogies in 2002, I raised issues related to technical means of ensuring confidentiality with digital media, but I found it disappointing that mine was the only contribution that resulted in a written paper (Burton 2003). In 2003, I contributed the Torres Strait Regional Authority submission to the Queensland government prior to the passing of its *Torres Strait Islander Cultural Heritage Act*, which, as I have said, is also disappointing in its scope and is conceptually archaic.

I note in conclusion that s18 of this Act provides for a penalty if any person ‘knows of the existence and location of Torres Strait Islander human remains ... and ... knows or suspects ... that the [Minister] does not know of the existence of the human remains’ and fails to report them. This sums up the situation perfectly: failing to report the existence of human remains is an offence, but failing to guard the intellectual knowledge of who the remains actually were is not.

References Cited

- Ballard, C., 2001. 'Human Rights and the Mining Sector in Indonesia: A Baseline Study.' Canberra: Australian National University for International Institute for Environment and Development and World Business Council for Sustainable Development
- Banks, G., 1999. 'Keeping an Eye on the Beasts: Social Monitoring of Large Scale Mines in New Guinea.' Canberra: Australian National University, Research School of Pacific and Asian Studies, Resource Management in Asia-Pacific Program (Working Paper No.21).
- Banks, G. and C. Ballard, 2003. 'Resource Wars: The Anthropology of Mining.' *Annual Review of Anthropology* 32: 287-313.
- Beckett, Jeremy 1963. Politics in the Torres Strait Islands. Unpublished doctoral thesis. Canberra: Australia National University
- Burton, J., 2003. 'Genealogy Issues Paper.' AIATSIS Workshop on Genealogies 5-6 October 2002. Canberra: Australian Institute of Aboriginal and Torres Strait Islander Studies [<http://www.ausanthrop.net/atsigen/history.php>]
- , 2004. 'Investigation of Land Disputes at Mer Island, Torres Strait.' Canberra: Pacific Social Mapping for Torres Strait Regional Authority.
- Demian, M., 2004. 'Seeing, Knowing, Owning: Property Claims as Revelatory Acts'. In E. Hirsch and M. Strathern (eds), *Transactions and Creations: Property Debates and the Stimulus of Melanesia*. New York: Berghahn Books, pp. 60-82.
- Eseli, P., 1998. 'Eseli's Notebook.' Translated from Kala Lagaw Ya into English, edited and annotated by Anna Shnukal and Rod Mitchell, with Yuriko Nagata. Brisbane: University of Queensland (Aboriginal and Torres Strait Islander Studies Unit Research Report Series, No. 3).
- Filer, C. and R. Jackson, 1989. 'The Social and Economic Impact of a Gold Mine on Lihir.' Konedobu: Lihir Liaison Committee.
- Filer, C., 1990. 'The Bougainville Rebellion, the Mining Industry and the Process of Social Disintegration in Papua New Guinea.' *Canberra Anthropology* 31(1).
- Haddon, A. C., 1904. 'Folk Tales.' In A.C. Haddon (ed.), *Reports of the Cambridge Anthropological Expedition to Torres Straits. Volume V, Sociology, Magic and Religion of the Western Islanders*. Cambridge: Cambridge University Press, pp. 9-120.
- , 1908. *Reports of the Cambridge Anthropological Expedition to Torres Straits. Volume VI: Sociology, Magic and Religion of the Eastern Islanders*. Cambridge: Cambridge University Press.
- Hardy, G.P. 1954. 'Namatanai Patrol Report No.4 of 1953/54.' Canberra: Pacific Manuscripts Bureau.
- Hirsch, E. and M. Strathern, 2004. *Transactions and Creations: Property Debates and the Stimulus of Melanesia*. New York: Berghahn Books.
- Janke, T., 2003. *Minding Culture: Case Studies on Intellectual Property and Traditional Cultural Expressions*. Geneva: World Intellectual Property Organization.
- Laade, W., 1971. *Oral Traditions and Written Documents on the History and Ethnography of the Northern Torres Strait Islands, Saibai-Danan-Boigu. Vol. 1*. Wiesbaden: Franz Steiner.

- Lawrie, M., 1970. *Myths and Legends of Torres Strait*. St. Lucia, Queensland : University of Queensland Press.
- Lihir Gold, 2003. '2003 Community and Environment Report.' [www.lihir.com.pg].
- Mabo, E.K., 1943-1992. *Papers of Eddie Mabo, 1943-1992. MS 8822*. Canberra: National Library of Australia.
- May, R. and M. Spriggs (eds), 1990. *The Bougainville Crisis*. Bathurst: Crawford House Press.
- Murray Island - Register of Births, Marriages and Deaths. Compiled by J.S. Bruce, A.O.C. Davies and E.M. Longford 1891-1927. Restricted. QSA Item PRV5563-1-1. QSA Microfilm. [see also AIATSIS]
- New South Wales Heritage Office, 1998. 'Aboriginal History and Heritage: A Guide. Parramatta, NSW.' [<http://heritage.nsw.gov.au>]
- Ray, S., 1907. *Reports of the Cambridge Anthropological Expedition to Torres Straits. Volume III, Linguistics*. Cambridge: Cambridge University Press.
- Rivers, W.H.R., 1901. 'Introduction.' In A.C. Haddon (ed.), *Reports of the Cambridge Anthropological Expedition to Torres Straits. Volume II, Physiology and Psychology*. Cambridge: Cambridge University Press, pp. 1-7.
- , 'Genealogies.' In A.C. Haddon (ed.), *Reports of the Cambridge Anthropological Expedition to Torres Straits. Volume V, Sociology, Magic and Religion of the Western Islanders*. Cambridge: Cambridge University Press.
- Sanders, W.G. and W.S. Arthur, 2001. 'Autonomy Rights in Torres Strait: From Whom, For Whom, For or Over What?' Canberra: Australian National University, Centre for Aboriginal Economic Policy Research (CAEPR Discussion Paper No. 215).
- Sheehan, C.G., 1990. Genealogical Sources Relating to the Eastern Islands of Torres Strait. Typescript.
- Queensland Government, 2003. 'Torres Strait Islander Cultural Heritage Act 2003 (Qld)'. Act No. 80 of 2003. [<http://www.legislation.qld.gov.au/LEGISLTN/ACTS/2003/03AC080.pdf>]
- Waria, N., 1900. Ned Warian polaizinga. Muruigao tusi. Lag nel Mabuiagi. ('Waria's Manuscript'). Cambridge University Library, Manuscripts, Haddon 1046.
- World Intellectual Property Organization n.d.a, [about 2001] 'Intellectual Property and Traditional Cultural Expressions/Folklore.' Booklet No.1
- World Intellectual Property Organization n.d.b., [about 2001] 'Intellectual Property and Traditional Knowledge.' Booklet No.2
- UNESCO n.d., [2001]. Memory of the World Register. [<http://www.unesco.org/webworld/mdm/register/index.html>]