Ownership and Appropriation

PRIVATE
PROPERTY
KEEP OUT
TRESPASSERS
WILL BE
PROSECUTED

Edited by Veronica Strang and Mark Busse

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'Possessing Culture'

Political Economies of Community Subjects and their Properties

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Abstract

The proliferation of collective claims made in cultural and proprietary terms demands a critical understanding of the political economies of community construction in order to understand ownership as a process through which property-holders are constituted as social actors and as political agents. The legal and political conditions under which culturally self-defined communities emerge to make possessive legal claims include neoliberal governmentalities, environmental regimes, intellectual property and cultural policy initiatives, as well as indigenous rights discourses which converge in many parts of the world to encourage collective needs and aspirations to be expressed in terms of community property rights. Exploring ethnographic examples from Latin America, it becomes clear that the global conditions under which collective holders of culturalised property claims have assumed greater agency and voice are diverse and their objectives contradictory. The communities empowered via recognition of their traditional knowledge, their intangible cultural heritage, or their traditional cultural expressions are situated at the intersections of old regimes of power and attachment, emerging forms of governmentality, and new imaginaries of social justice.

Introduction

Assertions of cultural property and proprietary claims premised upon cultural grounds have proliferated dramatically in the last decade (Brown 2005; Coombe 2009b). Globally, as more and more peoples bear or possess cultural distinction for new ends, legal discourses and international policies ground their claims (Coombe *et al.* 2007; Coombe 2007b; Comaroff and Comaroff 2009). Holders of cultural properties are emerging to make unique claims under the auspices

of international treaties and conventions, 'soft law', customary law and human rights norms. These collectivities and their social movements often stress grassroots priorities, local needs and place-based values but their activities are shaped by the activities of external actors, foreign institutions, global networks of influence, transnationally circulating policy instruments, and international norms and fields of publicity – as well as new forms of capital accumulation (Verderey and Humphrey 2004). In this essay, which draws upon my own ethnographic work in international policy arenas as well as the fieldwork-based studies of other anthropologists, I will sketch the contours of a distinctive field of transnational politics in which, concomitantly, cultural properties are asserted and new political identities and agencies are forged.[2]

In these processes of political articulation, communities are freshly 'imagined', traditions are 'invented' as innovative and generative foundations for investment, planning and development and 'cultures' proliferate in legal guise. We need to explore the legal and political conditions under which culturally self-defined communities emerge to make possessive legal claims, considering the kinds of leverage these legal and political conditions enable, as well as the constraints they impose. In short, I argue that we must critically acknowledge the political economies of community construction in order to understand ownership as a process through which property-holders are constituted as social actors and as political agents.[3] Neoliberal governmentalities, environmental regimes and activism, and indigenous rights discourses converge in many parts of the world to encourage collective needs and aspirations to be expressed in terms of community property rights. I will be particularly concerned with the conditions under which collective holders of culturalized property claims have assumed greater agency and voice, arguing that these global conditions and forces are diverse and their objectives often contradictory.

While neoliberalism has spread throughout the world, it has done so unevenly and inconsistently (Kingfisher and Maskovsky 2008). Neoliberal governmentality profoundly 'shapes cultural realms in the production and affirmation of diversity through the commodification of difference' (Perreault and Martin 2005:193). Yet it seldom operates entirely in conditions entirely of its own choosing (Radcliffe 2005); its mandates are interpreted and reworked by the subjects it enables who may subvert the opportunities it opens up for new ends (Bondi and Laurie 2005). As John Clarke suggests, neoliberalism as an analytic category is best approached 'as an assemblage of technologies, techniques, and practices that are appropriated selectively, that come into uncomfortable encounters with "local" politics and cultures, and that are mobile and connective (rather than "global")' (2008:138). Although neoliberalism may be present everywhere, it is not necessarily everywhere dominant, but is engaged in processes of articulation with other political-cultural projects. These include alternative development and

citizenship struggles as well as social agencies that may resist neoliberal strategies of depoliticization. Indigenous peoples have been particularly savvy in reworking indigenous and human rights discourses, in particular, to challenge neoliberal agendas and the subject positions they demand (Santos and Rodriguez-Gravito 2005) even while they take advantage of the forms of recognition that neoliberal regimes of governance, such as those of environmentalism, afford them.

After demonstrating these points using ethnographic studies from Latin America, I will clarify the theoretical concept of governmentality with which I am working, exploring its potential and its limits for understanding the heightened significance of community identities and proprietary claims under neoliberalism, particularly through a new emphasis upon intellectual and intangible cultural properties. Recognizing that community is a controversial analytic category, I argue that theoretical criticisms of the concept nonetheless need to attend to the political fact that collectivities so designated have assumed new significance as property-holding social actors. These developments take place in a transnational political field in which foreign agents figure significantly in the processes through which culturally identified collectives politically emerge as property holders and rights claimants.

Some Communities and their Properties

Recent Latin American studies illustrate the globalized terrain on which new political agencies are forged as well as the transnationally oriented tactics through which properties are asserted. Mary Weismantel (2006) explores the emergence of the contemporary political significance of the 'ayllu' in Andean regions, a term often glossed as 'community' in Andean studies. Only a decade ago the term was considered by anthropologists to mark a form of cultural homogeneity and continuity that betrayed an essentialist form of Orientalism. It has nonetheless become central to indigenous activism, resistance and political legitimacy in Colombia, Ecuador, Peru, Bolivia and Chile. For most of the latter half of the twentieth century the ayllu was accepted as a group sharing an identity based in descent, residence and ethos with social institutions and cosmologies that served spiritual, economic and political functions. Romanticized in its preconquest form by Peruvian intellectuals, it has long served to voice aspirations for distinctively Andean cultural futures.

Weismantel (2006:89) recalls that anthropologists 'described the ayllu, reified it, and then abandoned it' under shifting fashions of academic discourse. Meanwhile the ayllu became central, first to environmental advocates seeking communities for sustainability and biodiversity projects, and more recently to an anti-racist, anti-colonialist and non-Western political process of forging

new visions of indigenous liberty and autonomy. No longer an isolated closed corporate community (if it ever was) the ayllu is now promoted as a political vehicle for greater representation in national societies, new forms of citizenship, and decolonizing economic strategies. Moreover, it is expressly deployed in an overtly anti-capitalist politics that insists upon the continuing significance of gift exchange and collective ownership of means of production as a means to protect indigenous peoples against the predations of white society (ibid.:94–5). Cultural survival is one objective of ayullu movements, but so is the maintenance of material livelihood, political autonomy and national influence. Although attachments to tradition and its protection are characteristic of movement rhetoric, these possessive rights claims are nonetheless mobilized to project distinctive futures as alternatives to modern forms of development.

Geographers Andolina, Laurie and Radcliffe, moreover, show that this concept is transnationally over-determined in the Andes (2005; 2009). Focusing on the ayllu-based social movement in Bolivia, they illustrate how it has taken advantage of new ethnodevelopment policy frameworks championed by banks, development aid groups and NGOs. This dynamic is typical of new articulations between culture and development in the Andes through which subaltern actors have networked globally to put pressure on domestic authorities (Bebbington 2001). The Bolivian ayllu movement, Andolina *et al.* suggest, is 'emblematic of increasingly common transnational processes where multi-scalar changes in political visions, language, policies and funding flows converge to reconstruct identities' (2005:679). Both indigenous social movement platforms and multilateral development interventions in the Andes have converged around an image of culture as discrete and holistic (Radcliffe *et al.* 2002), but they deploy this imagery for distinctive ends.

Whereas language had historically predominated over local territory as political identity markers amongst Andean peoples in Bolivia, Ecuador and Peru, the influence of international indigenist movements, human rights, environmental and grassroots development NGOs, and global policy frameworks put new emphasis upon local territoriality, customs and heritage in the constitution of subjects who then demanded greater autonomy, direct participation, promotion of their languages and cultures, greater socio-economic equity and self-determination in development planning (Andolina *et al.* 2005:681–2). States and official development institutions selectively appropriated international indigenous rights concepts when re-crafting agendas for neoliberal development and governance. Many Latin American states adopted a multiculturalist or plurinational discourse to accompany new forms of decentralization while development industries adapted the concept of social capital to target indigenous social organization. The indigenous subject position was paradoxically localized and transnationalized in the process.

Ayllus have precolonial origins in Bolivia and many survived the revolution with lands and community structures intact. They are defined by limited direct

democracy in communal assembly, systems of collective work and community service. Historically they provided indigenous peoples with a collective identity, a spiritual base, 'and economic security through land rights, (non-capitalist) reciprocal exchange and collaborative labour' (ibid.:684). Nonetheless, the vast majority of peoples obtained access to state benefits and social security through peasant federations who were the state's privileged interlocutors. Through the weakening of the state and the growing intervention of transnational actors, the ayllu became a national political subject in the late 1990s.

In less than two decades, named community-level ayllus were championed as the region's authentic cultural base for legitimate grassroots political and economic activity as class and union politics were denigrated as external colonial impositions (ibid.:686). Foreign NGOs such as the Andean Oral History Workshop, Oxfam America and the European-Union sponsored Campesino Self-Development project played an important role in this process. Their interests meshed in affirming ethnicity over class and promoting collective rights for interlocutors defined culturally by local customs and territories. In this they adopted and promoted principles of indigeneity enshrined by the ILO Convention 169, an early international indigenous rights instrument which 'identified peoples according to maintenance of tradition and attachment to local territories' (ibid.:688) while recognizing communal property and customary justice systems. Ayllus, it appears, were the only spatially appropriate authorities to fit the bill; they became more self-conscious about their cultural identities and their cultural properties as a consequence.

As the Bolivian state instituted decentralization strategies that demanded popular participation, communities were registered as political actors and encouraged to legalize title to their original community lands. In a political context in which Bolivia was being lauded as simultaneously democratic, neoliberal and multicultural, the ayllu movement was finally embraced by the state. No doubt this was influenced by foreign investment needs and development bank desires to avoid negative publicity from overt harm to indigenous peoples. Indigenous traditional knowledge and communal social practices were perceived as valued 'social capital' in projects that endorsed the projection and assertion of localized ethnic identities. Ethnodevelopment, embraced by transnational networks of NGOs, bilateral agencies and multilateral institutions committed to indigenous rights, was new to Bolivia in the 1990s. It was modelled on the perceived success of indigenous peoples' confederations in Ecuador, where nationally linked, culturally based community actors have gained considerable autonomy, influence and wealth through their management of external investments (Radcliffe and Laurie 2006a, 2006b; Rhoades 2006; Perreault 2003). Like their Ecuadorian counterparts the Bolivian ayllu movement sought to constitutionalize territorial and cultural property rights and jurisdiction over community justice systems.

If for development agencies in the Andes indigenous culture is a form of social capital that can be treated like an asset, for indigenous movements culture is the basis for a successful politics of anti-colonialism (Radcliffe *et al.* 2002). Like its counterparts in Colombia, Peru and Ecuador, with whom they have established relationships of solidarity, the Bolivian ayllu movement sees itself as engaged in a project of decolonization. All of these groups have become increasingly politicized as part of transnational movements, opposing the expansion of the Free Trade Association of the Americas, for instance, and offering new visions of 'counter-modern' development (Gow 2008) based on indigenous rights to possess and develop traditional knowledge grounded in cultural heritage.

Indigenous identity parameters to some extent line up nicely with neoliberal objectives; concepts of social capital, grassroots empowerment and good governance may correspond to cultural difference, local institution building and traditional leadership practices (Andolina *et al.* 2005:698). Ayllu development platforms overlap with neoliberal agendas to the extent that the reactivation of Andean structures of production, reciprocity and collective labour are galvanized for boosting exports of 'ayllu value-added products' (ibid.:695), ecologically sound agriculture and local empowerment through community-based bicultural education. On the other hand their import-substitution policy, practices of self-reliance, opposition to free trade agreements, resistance to mining and oil extraction and growing linkages to other indigenous peoples in anti-capitalist movements suggest that these community-based indigenous movements have their own agendas.

These processes have been explored more locally. In *The Ecological Native* (2005), for instance, Astrid Ulloa explores the global legal and political economic conditions under which the indigenous peoples of Colombia's Sierra Nevada de Santa Marta (SNSM) constituted themselves as cultural communities and political interlocutors from 1992 to 2003 in national, transnational and international political networks that include political entities at various scales, multilateral institutions, NGOs and environmental social movements. In 1992 Colombia was internationally recognized as especially high in biodiversity in the global environmental talks resulting in the Rio Declaration that called for the implementation of sustainable development programs for biodiversity 'hotspots'. These policies promised an unprecedented flow of research and funding into hitherto remote areas in many parts of the world to the benefit of many peoples previously marginalized relative to the state. Under the auspices of the Convention of Biological Diversity (CBD), international influence on the Colombian government emphasized the need to acknowledge the knowledge, territories and resources of indigenous peoples (Ulloa 2005:102). Such UN-sanctioned international environmentalist politics arose simultaneously with international indigenous rights movements in the early 1990s, enabling peoples newly recognized as global actors to propound

new visions of their relationships to the places that sustained their lives and livelihoods.

Indigenous or ancestral territory, as distinguished from the Western concept of land and property (Nasaday 2003), was deployed to project a novel understanding of culturally distinctive peoples' collective proprietary interests into the international political sphere. The cultural politics of the indigenous peoples of the SNSM were dialectically articulated with global environmental policies; the historical continuity of their collective traditions of territoriality was rhetorically forged through a spectrum of power that extended from local government offices to transnational activist networks. This political strategy deployed a vocabulary that skilfully wove discursive threads from human rights, indigenous rights, sustainable development and environmentalist narratives. Indigenous peoples claimed their traditions as the source of globally relevant knowledge that enabled them to exercise environmental responsibilities with concomitant rights to exercise control over their territories and resources as legitimate and alternative forms of sustainable development. Such alternatives 'allow culture to serve as the coordinating political principle for environmental management and conservation strategies' (Ulloa 2005:75). This was a strategic means to recover control over territory regarded as an ecologically, politically and symbolically significant place and, concomitantly, to regain possession of natural resources and cultural heritage. This process is widespread in the Southern Americas. Gabriela Valdivia (2005) and Margrita Sertje (2003) observe analogous forms of collective culturally based political subjectivities emerging amongst black and indigenous populations in the Ecuadorian and Colombian Amazon respectively, as they became familiar with global discourses, transnational agencies and approved self-governance structures.

Indigenous organizations such as the Cabildo Territorial Council (CTC) in the SNSM represent their territory and its characteristics as integral to their cultural identities. Such territory, they are careful to maintain, is not empty land, a container for the provision of environmental resources, the common heritage of humankind, nor potential private property. Instead it is a place in which harmony is maintained by indigenous peoples as stewards of an integrated, inalienable, cosmologically defined and spiritually animated realm following principles that are now articulated by the SNSM as 'The Original Law'. Such customary law is asserted to legitimate ancestral ownership and to ground indigenous rights as well as the state's recognition of their plan for the management of the resources of their territory based upon the traditional knowledge they are acknowledged to possess. Thus they:

> project an image of themselves in the national and international media as ecological
> indigenous peoples whose great care for nature is based on their ancestral wisdom from

which the 'younger brothers' should learn. Their strategies include seeking relations and support from NGOs, environmental organizations, human rights organizations, anthropologists and public figures who can help publicize their concerns about their cultures and territory. Indigenous peoples have a clear awareness that their cultural identity has been affected by the importance of the SNSM's status as one of humanity's heritage sites due to its biological and cultural diversity. This linkage has become an important political strategy for publicizing their status as autonomous indigenous peoples. (Ulloa 2005:72)

Throughout the Americas in the last two decades, assuming an ecological ethnicity has been a means to appeal to transnational NGOs and social movement networks for new forms of support ranging from financial assistance to transnational political alliances. In so doing indigenous peoples established new relationships with transnational indigenist movements and other social movements, building coalitions with peasants and workers that enabled them to press for new visions of citizenship and interculturalism resulting in new forms of democratization (Ulloa 2005:16; see also Asher 2009; Gow 2008; Gustafson 2009; Rappaport 2005; Wilshusen 2003). Moreover:

> they have also brought transnational agents into the local political process in an effort to integrate their strategies of modern science and planning, expert knowledge, sustainable management of natural resources, and the idea of territory … Indigenous policy proposals and political activities find a focal point in the idea of indigenous autonomy that has reshaped the terms of public discourse about nature, environment and ecology and formed the political context in which struggles over competing conceptions of nature, territory and property are taking place (Ulloa 2005:216).

Such struggles are entailed by the fact that indigenous empowerment has come at a price; ironically, the neoliberal regimes of power such as the environmentality (Agrawal 2005) or eco-governmentality 'in which they are now enmeshed increasingly demand that they perform as free and autonomous agents in western terms in order to position their lands, resources and knowledge as values in environmental markets' (Ulloa 2005:16).

As many scholars have noted, the new multilateral institutions that regulate the environment such as the Global Environmental Fund (the funding body for the CBD) do so in neoliberal terms that construct biodiversity as a world currency subject to international surveillance and scientific control. The CBD recognition of indigenous and local communities' traditional knowledge as relevant to the conservation of biological diversity, for example, is embedded in a neoliberal regime that defines the latter as a 'resource' for humankind best valued through market mechanisms (Mc Carthy and Prudhon 2004). Hence the emphasis upon securing access to and sharing benefits from the development of useful genetic

resources into (patentable) goods and the emphasis on market-based intellectual property mechanisms to ensure these.

Under such conditions, indigenous peoples may find their practices and knowledges transformed into forms of exploitable commodified expertise. They may be encouraged to treat their territory as environmental capital best developed for eco- and ethno-tourism, their resources as the basis for eco-products, and their collective identities recognized as disembedded political entities – self-interested agents capable of approaching their lands and resources instrumentally and contractually (they may also be completely ignored if the political and economic costs of dealing with them are deemed too onerous, as Cory Hayden (2003a, 2003b) has illustrated). Non-indigenous parties may desire secure indigenous rights and sovereignties predominantly to provide the certainty necessary for creating legally binding market transactions; intellectual property is promoted as a vehicle to further these ends. Not surprisingly, however, some indigenous peoples now use the vocabularies of Western intellectual property systems in new ways.

Colombian indigenous peoples were amongst the first in the world to insist that their traditional environmental knowledge and the genetic resources in their territories were their own collective intellectual properties (Ulloa 2005:46–7), effectively controlling research in their territories, asserting the priority of their own customary law for protection of their knowledge and traditions, contesting the intellectual properties granted to others based on appropriations of their own perceived cultural properties, and calling, along with other indigenous peoples, for a global moratorium on bioprospecting (see essays in Florez 1998). Whether we see indigenous peoples' collective identities and proprietary claims as evidence of a subaltern cosmopolitanism or counter-hegemonic globalization (Eudaily 2005; Goodale 2006; Santos 2002; Stewart-Harawira 2005), or as harbingers of neoliberal investments in ethno-incorporation (Comaroff and Comaroff 2009), we cannot deny that more and more communities are heavily invested in culturalized futures.

While indigenous people have become increasingly savvy in navigating the new terrains that neoliberalism and an emerging human rights discourse present, they have done so in a fashion that has attracted scholarly criticism. Such criticism fails to reflect upon the structurations of the legal and policy fields in which these assertions are calculated interventions. Allegations of essentialism (strategic or otherwise), recognitions of social construction (not appreciated as creative political agency), citing inventions of tradition (which are implied to be evidence of inauthenticity), and accusations of primitivism or misguided romanticism levelled at contemporary assertions of collectivity reveal a profound lack of sensitivity to the stakes at issue for many peoples and the political economies in which they are situated (Doane 2007). They may also unintentionally serve to undermine subaltern political objectives (Briggs 1996; Hale 2006).

Many debates about the wisdom of protecting traditional knowledge, intangible cultural heritage, or other cultural properties also reveal a lack of knowledge of the social movements and struggles in which possessive and/or proprietary claims to cultural resources are made (Coombe 2005). Arguably some anthropological treatments of the collective identities that emerge in indigenous politics have been too quick to situate and reduce these identities to figurations in Western discourses that demand certain essential positionings for natives, thereby reducing indigenous activity to a kind of *induced agency* (Veber 1998:387). Assertions of indigenous cultural content in a peoples' identity and aspirations thus becomes evidence of strategic image management or self-Orientalism, preempting the possibility that other ways of life and cultural resources drawn from other histories might provide resources for an effective contemporary political subjectivity. Anthropologists might instead pose more pertinent questions. What kinds of recognition and redistribution are being offered to peoples who choose to occupy spaces of collective subjectivity that they define culturally? What political opportunities does this afford them and what political limits do they thereby face?

A critical ethnographic exploration of this new political economy, I would suggest, might attempt to accomplish three objectives. First, such an analysis would address the local needs and desires of actors engaged in transnationally linked social movements that inspire claims to cultural goods. Second, it would delineate the interpellation of market-based subjectivities that seek to naturalize possessive relationships to culture as a development asset or other resource. Finally it would interrogate the relationship between these. In the Ecuadorian and Bolivian Andes, for instance, control over and possession of traditional knowledge as a new form of property seems to figure *simultaneously* in neoliberal desires to locate 'social capital' and invest in its (market-based) futures *and* in rights-based struggles for recognition, differentiated citizenship and negotiated autonomies from state powers. State and market-based pressures to produce developmentally appropriate culture greet those who struggle to articulate political aspirations for culturally appropriate development (Laurie *et al.* 2005; Andolina *et al*. 2009).

Systems of intellectual property, rolled out to extend market mechanisms into an ever-wider range of cultural activities, produce new social differentiations, as do rights recognizing indigenous autonomy for the purpose of incorporating peoples as 'active self-governing market subjects' (Bondi and Laurie 2005). Assertions of collective patrimony may be read by banks and development agencies as rational, instrumental, proprietary behaviour, but they may also figure in political projects that reterritorialize, re-embed and re-enchant concepts of community and culture. Neoliberalism may aspire 'to foster globalization, marketization and entrepreneurship', but paradoxically as investors of diverse kinds seek local partners, they seem to incite the articulation of '*diverse* sites of community'

(ibid.:27; emphasis mine) that emphasize communitarian subjectivities, social solidarities and collective citizenship (Andolina *et al.* 2009).

Governmentality's Agents

Under neoliberal conditions, social theorists assert, a new form of governmental rationality is emerging that focuses on 'the organization of self-regulating and self-managing communities' (Bennett 2002:142) constituted through the new programs that make them administrable (Rose 1999:189). This is a shift in government that recognizes collectivities as new kinds of persons (Clarke 2008) and invests them with new responsibilities as 'self-governing' actors (Ong 2006). Not surprisingly social groups involved in this new field of engagement learn to project their needs and aspirations in the languages of self-governance and identity assertion that both economic markets and international political arenas increasingly demand.

Governmentality is a concept particularly relevant to the study of cultural property because the concept allows scholars to attend to the ways in which 'culture has often been both the object and the instrument of [the] governmental policy that regulates social life' (Bratich *et al.* 2003:6). Foucaultian anthropologists suggest that technologies of subjectification and the management of resources for identity construction are important means by which social behaviour is effectively managed (Inda 2005:10). Under neoliberal conditions the work of governmentality is often done not only by states, but by so-called NGOs whose agencies validate new forms of knowledge and recognize expertise held by newly empowered subjects (Rose 1999). As we have seen, these newly empowered subjects increasingly constitute themselves by asserting a possessive relationship to territories and resources which they seek to protect, to conserve, to sustain, to manage (and sometimes to trade), encouraged and sometimes incited by a host of laws and policies.

Scholars of cultural property have neglected a fundamental tenet of legal anthropology – namely, that identities do not exist before the law but are forged in relation to law and the subject positions afforded by legal regimes and policy negotiations (Hirsch and Lazarus Black 1994; Mertz 1994). This is one aspect of the Geertzian (1983) observation that law creates the facts it purports merely to recognize, and the Marxist position that a possessive subject is called forth by forms of capital accumulation as a matter of legal ideology and consciousness (Collier, Maurer and Suarez-Navez 2001). Governmentality scholars, moreover, ask that we consider the encouragement and support of subjectivities in such ways that these come into alignment with the diverse objectives of regulation.

For example, numerous parties have engaged in lengthy international political negotiations over the best means to protect traditional knowledge, innovations and practices (hereinafter traditional knowledge). So-called indigenous and local communities embodying 'traditional' lifestyles are understood in global policy circles to make substantial contributions to the preservation of biological diversity through the cultural specificity of their traditional knowledge, but are unfortunately excluded from the benefits that accrue from the use of their knowledge and innovations in commerce. For our purposes the veracity of this narrative is not as important as its political consequence: the massive efforts invested in righting this perceived wrong through the deliberations around new proprietary entitlements and the local aspirations that attach to these negotiations.

Although they are *not* uniformly popular, variations on intellectual property rights such as legislative amendments to copyright, trademark, geographical indication and trade secret protections as well as new forms of intangible property protection have been recommended as solutions to the injustices perceived to follow from a lack of recognition and compensation for the use of traditional knowledge. Proposals aim to ensure adequate benefit sharing with communities in the Global South, that communities provide prior informed consent for the use of their knowledge about environmental resources, that patents based upon biological resources disclose places of origin to enable communities to detect instances of 'biopiracy', and that local customary law is respected, so as to prevent practices of corporate misappropriation. Representatives of states, NGOs and indigenous peoples convene regularly to discuss these issues at World Intellectual Property Organization (WIPO) meetings to draft provisions to protect genetic resources, traditional knowledge, and traditional cultural expressions (Coombe 2009a). Simultaneously UNESCO steers international deliberations about the best protocols for implementing the Intangible Heritage Convention, brought into force in 2006 to recognize community rights in a broad new range of expressive cultural forms. In all of these ongoing policy-making efforts, I would suggest, norms and subjects are co-produced and co-evolve (Reardon 2005).

Under neoliberal conditions distinctive forms of subjectification may therefore be accomplished by the devolution of the management of cultural resources to distinctive collectivities who are encouraged to adopt possessive bearings towards them pursuant to policies promoted by the CBD, UNESCO and WIPO (amongst others). Population groups are arguably 'subjectified' as communities while their practices are objectified as traditional knowledge, traditional cultural expressions or intangible cultural heritage, proprietary forms over-determined by international legal requirements and institutional demands. Simultaneously global and regional indigenous rights norms legitimate collective possessive claims (Ahmed *et al.* 2009) that support new forms of sovereignty, alternative forms of development and distinctive cultural futures. Community may serve diverse purposes.

Community Subjects, Foreign Parties and Indigenous Politics

Community is a term that has long attracted controversy in anthropology and the social sciences (Amit and Rapport 2002; sources cited in Creed 2006b)**.** One caution against the romance of community came via critical ethnographic studies of community-based natural resource management policies and regimes that proliferated in the 1990s (Agrawal and Gibson 2001; Brosius 1997; Brosius *et al.* 1998). These scholars reminded us that community was a highly naturalized and normative term. They insisted that widespread preoccupations with 'mythic' communities – small, harmonious, integrated, isolated groups using locally evolved norms to manage resources sustainably – were dangerous fictions that blinded policy-makers to internal divisions, local politics and multi-scalar strategic alliances. Policies that required a suitably 'corporate' property-owning social group as a precondition for extending rights and directing investments, they feared, would exclude many of the world's disadvantaged (Li 1996). Indigenous or tribal groups might be privileged by this discourse while other populations of the rural poor would be further marginalized. In many parts of the world, people indigenous to a region were not formed into bounded groups with a clear sense of territorial possession (Li 2000; Tsing 1999). The extension of new forms of culturalized community properties might thus create distributional inequities.

A governmentality perspective, however, is less concerned with communities as 'natural' social actors and more concerned with the realities such mappings propound and the practices and identities thereby put into play. Rather than positing or refuting the positivity of communities, we might attempt instead to maintain an emphasis upon community-making processes, recognizing that 'communities, states and NGOs are mutually implicated in relations laced with power' (Li 2005:445). Communities will be formed, co-opted and constituted as possible loci of demand for and opposition to governmental projects in engagement with state institutions, particularly when making proprietary claims where the state is a necessary interlocutor.

Scholarly debates about communities in environmentalist politics reached an impasse early in the twenty-first century. It became apparent that the evocation of community in community-based natural resource management furthered diverse and often diverging agendas. Conservationists hoped to involve local people in transnational conservation and resource management as a means of protecting biological diversity. Development organizations (driven in part by past criticisms) aimed to promote local participation. Activists hoped to empower local groups, and indigenous peoples aspired to new forms of recognition and political rights based on their cultural knowledge (Brosius *et al*. 1998:158–9). Many scholars unfortunately ignored these diverse agencies and their objectives. Instead they scrutinized the fictions of community, territory and tradition used to accomplish

these ends. But if advocates could be accused of using these concepts romantically, critical scholars appeared to glorify their own critical and ironic stance towards 'social construction' – reducing genuine political dilemmas, environmental needs and local aspirations to philosophical problems of 'essentialism' and its perceived dangers (ibid.:159–60). Anthropologists realized that social constructivist critiques served to obscure complex politics and inadvertently undermined subaltern struggles while supporting developmentalist agendas (Brosius *et al.* 2005). With such hindsight we might seek to avoid these same quandaries in our studies of emerging community property holders and their collective cultural claims.

One volume of anthropological essays posits community as 'an obsession' that has 'become ubiquitous in the way we talk and think about life in the twenty-first century' (Creed 2006a:3), primarily because of the proliferation of social engineering projects that focus on the community as the appropriate vehicle and target for change. Nonetheless if community-based governmentalities have multiplied, actors who resist such projects *also* constitute themselves as communities, as do those who assert claims to resources that recognition as a community may secure (ibid.:3). For instance, despite earlier theoretical hesitations about using the community concept in his research in rural Thailand – due to its capacity to romanticize group social life – Peter Vandergeest now admits that he finds it unavoidable, 'because it allows activists and scholars to discuss forms of place-based collective action' (2008:208) that are not appropriately described using other categories of analysis. As he acknowledges, communities figure as social actors with distinctive capacities in global commodity chains and NGO activist networks in ways that were inconceivable just two decades ago. Nonetheless, I would agree with Creed (2006a:6) that we should use the concept to focus analysis 'rather than [as] simply an empty category of heuristic or descriptive convenience', recognizing that it is doing distinctive forms of political and legal work.

Emerging global norms demand that communities provide consent for the use of knowledge and resources, reflect upon tradition and consider their practices as forms of heritage. International laws and international institutions call for communities to exercise particular powers and propose that they hold particular types of properties. Where peoples have no institutions to engage in these negotiations and/or where states have not implemented laws to recognize them, 'communities' will nonetheless be located. Early anthropological studies of bioprospecting and alleged biopiracy (Berlin and Berlin 2004; Greene 2004; Hayden 2003a, 2003b) illustrated the politics of community performativity, strategic entrepreneurialism, as well as the perverse consequences that ensued when traditional knowledge was objectified and community reified in the absence

of legal frameworks of recognition. Corporations, NGOs and development agencies bearing obligations to secure consent for the use of traditional knowledge or to secure community participation when designating heritage properties will inevitably find communities at some scale who are prepared to bargain. Questions of who represents communities are inevitable, but they are not necessarily insurmountable (Rosenthal 2006). We can anticipate that states will increasingly recognize new forms of community to decentralize government powers and responsibilities, meet international responsibilities and attract new forms of investment. In short communities are rarely wholly homegrown but increasingly forged in encounters with foreign agents.

Communities form in contexts and for purposes of engagement with other institutions; they will present themselves in the fashion that attracts powerful interlocutors at different levels of power (Li 2000). They may be assisted by actors such as NGOs, who may be more adept at deploying rhetorics that enamour metropolitan audiences to 'peripheral' causes and community violations. This is certainly the case with respect to the culturalization of property rights. International institutions and NGOs clearly play important roles in the process of mobilizing communities to claim rights to cultural resources and to claim resource rights on cultural grounds. Both indigenous peoples and other so-called local communities have strategically used their new role in biodiversity politics, for example, as a means to effect an institutionalization of their territorial and political rights while calling international attention to their dispossession (Escobar 2008).

We might accept that communities are made, not found, and that the culturalized localities we see emerging are globalized sites that invoke an armoury of transnational institutions and agencies – without thereby prejudging their capacities as political vehicles. The ethnographic studies examined earlier illustrate a political terrain in which discrete communities embracing culturally distinctive identities emerge in concert with transnational activities, interests and investments. NGOs have been crucial in focusing indigenous movements on cultural issues and rights to difference, consolidating their political and organizational processes around cultural identities centred in tradition under the larger legal and political umbrella of self-determination. Proprietary demands for territories, resources and control over knowledge and heritage have been central to these struggles. In these political processes the cultural attributes on which they ground their claims become a constitutive part of their political identities, even when these distinctions were not historically matters of political significance (Escobar 2008; Hvalkof 2006). The collective values they hold as communities also become increasingly significant in their political projections.

Conclusion

Cultural difference has become an important resource in transnational struggles for recognition, redistribution, and economic and political investment, as well as the basis for establishing new rights and new properties. The communities empowered via recognition of their traditional knowledge, their intangible cultural heritage, or their traditional cultural expressions are situated at the intersections of old regimes of power and attachment, emerging forms of governmentality and new imaginaries of social justice. In some areas of the world they may map nicely onto historical forms of identity, solidarity and communal attachments, but in others they may be constituted using borders that reiterate colonial divisions of power, further exacerbate local relations of social inequality, isolate and contain peoples, and depoliticize their struggles (Li 2007). State powers may instantiate new forms of collective subjectivity for purposes of discipline, surveillance and appropriation. NGOs may find traditions and recognize communities where they are most comfortable. Aid and lending institutions may continue to 'locate culture' in areas they perceive as having the requisite social capital to engage in collective entrepreneurship (Bebbington 2004). However,we may also find recently 'capacitated' communities making new demands on states, international courts and multilateral institutions for legal recognition, political autonomy and respect for customary law, to limit and enjoin extractive development projects, to oppose trade agreements and reinterpret intellectual property regimes, while engaging in new forms of coalition building and articulating new forms of citizenship and means of democratization. The articulation of cultural properties figures in most of these struggles.

Possessive cultural claims emerging from biodiversity conservation and sustainable development have in some places been linked to emancipatory discourses on minority rights, democracy, new types of citizenship and social justice struggles. In others they have led to new forms of exploitation and disenfranchisement. The same range of political consequence should be anticipated for the proliferation of culturalized property claims that will ensue in the near future as governments enact law and policy to meet their commitments under new international legal instruments. While neoliberal governmental practices may seek to attach groups to the kinds of heritage that can most easily be managed as commodifiable resources, they do not necessarily succeed in so doing: 'it is important to look not just at the forms of collective and individual identity promoted by practices of government, but also at how particular agents negotiate these forms – how they embrace, adapt, or refuse them' (Inda 2005:11).

Ultimately, the 'friction' (Tsing 2005) produced when the subjectifications of governmentality come up against and potentially ignite new forms of struggle offers promising new avenues for anthropological inquiry. Governmental

activities may originally have been designed to manage and control so-called local communities so as to incorporate them more completely into regimes of state and market citizenship. However, to the extent that these subject-positions become encoded as indigenous ones, they also invite local communities thus subjected to reflect upon their historical practices and to express their appeals in the normative discourses that global indigenist movements afford, articulating new limits to neoliberal governmentality in the process (Coombe 2007a). Processes of community formation and cultural proprietorship are processes of political articulation. New legal and political economies of property are transnational, sometimes inconsistent, usually dynamic and often socially generative. Diverse forms of sociality are clearly imagined and engendered by the interpellation of communities to serve needs for neoliberal governmental engagement just as they will be by expectations for collective management of cultural property. Governmental subjectivities may also be diverted and deployed in movements for livelihood security, political autonomy, territorial rights and distinctive forms of citizenship through indigenist movements that skilfully invite cultural difference to be performed as a place of unique responsibilities requiring distinctive sovereignties. The propriety of owning culture thus promises to continue to be the subject of academic controversy and political vitality.

Notes

1. The author wishes to acknowledge the Stellenbosch Institute for Advanced Study (STIAS) for providing resources and support for this research, and Nicole Aylwin and Lisa Norton for research and bibliographical assistance. She thanks Ilana Gershon for superb commentary and constructive criticism.
2. The legal geography I map in this essay is most pertinent to an international and transnational political arena in which indigenous identities are recently emergent, revitalized, and often contested. It may be less salient where indigenous identities have long been recognized by state powers and established by treaty relationship, but even in these situations, peoples are variously located and those less privileged by historical circumstance may look beyond the state for political leverage.
3. I use a similar framework to explore the construction of community subjects with particular emphasis upon intellectual property rights and policy in a complementary paper that draws upon different ethnographic examples (Coombe 2010).

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