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Cultural Agencies

The Legal Construction of Community Subjects and Their Properties

New holders of intellectual properties and other rights in intangible cultural heritage are emerging to make distinctive claims under the auspices of international treaties, conventions, international customary law, and human rights norms.[1] These new collectivities and the social movements in which they figure often stress local priorities, needs, and place-based cultural values, but their activities are shaped by the activities of external actors, global networks of influence, and transnationally circulating documents, as well as international norms and fields of publicity. To understand the relationships among these activities, we need to take the measure of a transnational, multiscalar politics in which diverse actors engage in practices of articulation that draw upon a range of legal and normative resources.

In these transnational processes, communities are in important ways imagined, "traditions" are often invented and "cultures" seem to be emerging everywhere in legal guise (Coombe 2005b, 2010). Nonetheless, simple assertions of social constructivism seem woefully inadequate as a form of critique in these contexts. There is little doubt that many new cultural collectivities making possessive claims do so as market actors for economic purposes (Comaroff & Comaroff 2009).

However, the recognition of collective identities and values has also become a means by which international agencies such as development donors as well as various nongovernmental organizations (NGOs) act transnationally to locate investments, invest energies, and demonstrate their progressive intentions. Simultaneously the assertion of collective values may enable peoples linked into larger social movements to express aspirations for distinctive livelihoods and alternative futures. Control over traditional knowledge, for example, has become a crucial nexus where development industry desires to locate social capital, and invest in market-based cultural goods comes up against rights-based struggles for recognition and autonomy. Intellectual property policy is being forged to address both sets of interests.

New social movements struggle to incorporate traditional knowledge within the global frameworks of indigenous and human rights rather than the trade-based commodity logic of existing intellectual property regimes in the hope that the former will provide a normative counterweight to the market forms that states and transnational development agencies ask those who bear cultural distinction to embrace (Coombe, Schnoor, & Ahmed 2007). Critical explorations of emerging global politics with respect to intellectual property do need to address the interpellation of market-based subjectivities in which possessive relationships to culture become naturalized (e.g., Comaroff & Comaroff 2009), but they also need to attend to local values and aspirations as these are expressed in the ideals of transnational social movements that inspire rights claims to cultural goods (Coombe 2009).

Legal Subjects and Governmentalities' Agents

The anthropologist Clifford Geertz (1983) once observed that law creates the facts it purports merely to recognize. This includes the subjects it recognizes and the subject positions it affords. As Marxist theorists noted, a possessive, rights-bearing subject is called forth by forms of capital accumulation as a matter of legal ideology, interpellation, and consciousness (Collier, Maurer, & Suarez-Navaz 2001, Frow 1996). These perspectives were also elaborated by poststructuralist attention to the force of legal policy in shaping ideals for modern selves (Miller 1993). Legal anthropologists have illustrated that identities are forged in accommodation and in resistance to law and that communities and localities are forged in relation to legal representations and their interpretations (Mertz 1994: 1243). Critical and constitutive theories of law (Greenhouse 1994) also recognized law's productive capacities—its provision of generative conditions for articulating social realities and resources for those seeking new forms of political recognition: "The law must be understood

not simply as an institutional forum or legitimating discourse to which social groups turn to have preexisting differences recognized but, more crucially, as a central locus for the control and dissemination of those signifying forms with which difference is made and remade. The signifying forms around which political action mobilizes and with which social rearticulations are accomplished are attractive and compelling precisely because of the powers legally bestowed upon them" (Coombe 1998: 37). Critical theories of personhood and property, moreover, have increasingly shown that the relationships between the legal construction of persons and the natural realities of individuality and sociality are radically contingent (Pottage & Mundy 2004: 3). Rather than focusing on the degree of their correspondence, we might consider how the emergence and deployment of law's categories through distinctive technologies comes to constitute a world of opportunities as well as constraints, political options as well as foreclosures.

Some of the richest interdisciplinary scholarship on intellectual property has explored the law and society tenet that identities do not exist before the law but are forged in relation to law and the subject positions it affords. Work considering how both the subject position of the author and specific forms of authorial creativity are legitimated by copyright law (Gibson 2006, Rose 1993, Woodmansee & Jaszi 1993, Woodmansee 2000), how publicity rights enable celebrity personas (Gaines 1991, 2005, Lury 1993), and how early trademark laws worked to constitute national consumer subjects (Coombe 1998) has illustrated the constitutive character of intellectual property law. This recognition of intellectual property's productive capacities needs to be extended into the globalized contexts in which intellectual property and other related cultural rights are being extended.

Intellectual property laws are one means by which attachments and entitlements to "intangibles" such as expressive works and heritage goods are forged. Under neoliberal conditions, this work is done not only by states but by NGOs whose agencies validate new forms of knowledge held by newly empowered subjects, such as the traditional environmental knowledge recognized as being held by indigenous and local communities under the Convention on Biological Diversity (CBD). An "assemblage of legal practices, legal institutions, statutes, legal codes, authorities, discourses, texts, norms and forms of judgment" (Rose & Valverde 1998: 542) is now doing the work of interpellation in fields where new rights are negotiated and collective subjects are recognized and invested with new responsibilities for managing cultural goods.

Considerations of negotiations over new forms of intellectual property would be more fruitfully approached with these insights in mind. For example, international deliberations about the best means to protect traditional

environmental knowledge, innovations and practices (hereinafter "traditional knowledge") have engaged governments, NGOs, indigenous peoples, the World Trade Organization, the Trade-Related Aspects of Intellectual Property Rights Council, the World Intellectual Property Organization (WIPO), the Conference of the Parties to the CBD, and numerous UN bodies over the past twenty years. So-called local and traditional communities as well as those politically acknowledged as "indigenous" are understood to make substantial contributions to the preservation and maintenance of biological diversity and, through their traditional knowledge, to biotechnology's inventions but are excluded from the benefits that accrue from the use of their knowledge and innovations in commerce. Whether one accepts this narrative as an objective truth (Mgbeoji 2005), insists that it is a romantic and dangerous fiction to be denied (Chen 2006), or understands it politically as one pillar of new social movements (Coombe 2005a), there is simply no denying the energies, hopes, and aspirations that attend to it or the years of deliberative effort that have been poured into resolving this perceived problem. Nor should we ignore the ways in which countries of the Global South have found in this narrative a new form of global intellectual property and trade policy leverage.

In any case, we need to move beyond the question of whether this new imposition of neoliberal rationality adequately describes or represents a society that preexists it, to critically consider how it operates to produce new forms of knowledge, expertise, and identity that govern new domains of regulation, such as environmentalist regimes of sustainable development with their valuations of biological diversity (Harvey 2001, Watts 2000) and heritage regimes with their registers of cultural diversity (Hafstein 2009). Moreover, as nature and "life itself" (Franklin 2000, Rose 2007) are drawn into the economic discourse of efficient resource management, and both genetic resources and traditional knowledge are represented as works and innovations to be exchanged under the logic of informational capital (Coombe 2003, Parry 2004), new subjects must be found to broker these transactions.

Although they are *not* uniformly popular and in may indeed be inappropriate, variations on intellectual property rights are recommended as solutions to the problems that the historical lack of recognition and compensation for traditional knowledge has created (as means to ensure appropriate "access and benefit sharing," to secure practices of prior informed consent, to demand disclosures of origin and respect for customary law, and to prevent practices of corporate misappropriation). In these ongoing policy-making efforts norms and subjects coevolve and are coproduced (to use the useful vocabulary of science and technology studies; see Reardon 2005).

WIPO has taken up these issues through an intergovernmental committee (IGC) that has been convening regularly and developing new guidelines for intellectual property policy with respect to genetic resources, traditional knowledge, and traditional cultural expressions since 2001. Simultaneously, UNESCO steered the Intangible Cultural Heritage Convention to bring it into force in April 2006 and facilitated the passage of the Convention on Cultural Diversity, which went into force in 2007. These international instruments share legitimating narratives that proceed from recognition of distinctive values (biodiversity and cultural diversity), coupled with a presumption of their impending loss, to recognize new holders of rights in distinctive intangibles, who are thereby deemed to have an incentive to preserve, maintain, and develop these cultural resources in a sustainable fashion (or at least to prevent their misappropriation). The homology of purpose and plan across these instruments is not insignificant. Governmental intervention takes place through the use of assemblages—abstractable, mobile, and dynamic forms that traverse and reconstitute society, culture, and economy (Ong & Collier 2005, Perry & Maurer 2003). Fact-finding missions, government recognition and compilation of best practices, material transfer agreements, inventories, and community research protocols are all legal technologies in the area of intellectual property that constitute new forms of governmental intervention.

Under neoliberal conditions the devolution of the management of distinctive cultural identities and resources is arguably a distinct form of subjectification. Recognition of "indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity," for example, might be considered as an interpellation of culturally objectivized collective subjects—new forms of collective personhood designed for state ends and overdetermined by international legal requirements and multilateral institutional demands. The UNESCO Convention on the Safeguarding of the Intangible Cultural Heritage also functions to constitute communities as new subjects while it locates the heritage resources they are now invited or enjoined to protect (Albro 2007, Blake 2009, Hafstein 2007). Population groups are "subjectified" as communities and their practices "objectified" as intangible cultural heritage or as evidence of cultural diversity through these demands for their participation. To paraphrase Arun Agrawal's discussion of natural resource management (substituting "intellectual property" for "environment" and "cultural resources" for "forest resources"):

> It would be fair to say that changes in human subjectivities, as these occur concomitantly with changes in institutionalized governance of [intellectual

> property], are the least well understood and investigated of all [intellectual property] related changes. Institutional strategies to govern [cultural resources]—to allocate, to monitor, to sanction, to enforce, to adjudicate—do not simply constrain the actions of already existing sovereign subjects. Nor is it the case that people's responses to new forms of regulatory strategies are exhausted by the continuum between resistance and conformity. Instead, it is important to recognize how these strategies and their effects on flows of power shape human subjects, their interests, and their agency. (2003: 258)

Community "Stakeholders"

Just as critical intellectual property scholars caution us against the "romance of the public domain" (Chander & Sunder 2004), critical social scientists caution us against the romance of community, most recently and relevantly through critical ethnographic studies of community-based natural resource management regimes (Agrawal & Gibson 2001, Brosius 1997, Brosius, Tsing, & Zerner 1998, 2005). Widespread preoccupations with mythic communities—small, harmonious, integrated, isolated groups using locally evolved norms to manage resources sustainably—may operate to blind policy makers to internal divisions, local politics, and multiscalar strategic alliances. Policies that insist upon locating a commons and a suitably "corporate" property-owning social group as the relevant designated community as a condition for extending rights and directing investments may exclude many of the world's poor (Li 2005). In many parts of the world, people indigenous to a region are not formed into bounded groups with a clear sense of territorial possession (Li 2000, Tsing 1999). Many peoples have been historically displaced and their migration to new areas encouraged; efforts by the World Bank and NGOs in such regions to map well-defined units of indigenous groups and associated territory may be misguided and, in the worst-case scenario, do new forms of social violence. A constitutive legal perspective, however, might be less concerned with ascertaining who the "natural" social actors for such policies are or should be and more concerned with the realities such mappings propound.

Rather than positing or refuting the positivity of communities, then, we might attempt to focus on community-making processes. Critical scholarship on the environmental politics of community-based natural resource management suggests that 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). In this they are often assisted by other actors such as NGOs who may be adept at deploying the political rhetoric that enamors metropolitan audiences to their

causes. In such engagements, communities draw upon available legal resources and subject positions to attract state resources and NGO investments, resist some capitalist development industries, and encourage others. We should keep this in mind when we consider the extension of collective rights to traditional knowledge, intangible cultural heritage, and the possession of traditional cultural expressions. The evocation of community in cultural resource management will be used to further diverse agendas, just as it did in the field of natural resource management (Brosius, Tsing, & Zerner 1998, 2005). There, "conservationists hoped to involve local people 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 . . . [while] indigenous peoples' advocates aspired to new forms of recognition and political rights based on their cultural knowledge" (ibid.). A similar set of agendas is clearly at work in the principles animating the Convention on Intangible Cultural Heritage (Smith & Akagawa 2009), and the Convention on Cultural Diversity (Beat Graber 2008), both of which provide new rationales for transforming intellectual property protections.

Many early scholars of environmentalism ignored the diverse agencies and objectives at work in community-based management schemes. Instead, they scrutinized the "fictions" of community, territory, and tradition used to further these social and political agendas. If advocates used these concepts romantically, however, critical scholars glorified their own critical and ironic stance toward "social construction," thereby reducing genuine political dilemmas, environmental needs, livelihood struggles, and local aspirations to philosophical problems of essentialism (Brosius, Tsing, & Zerner 2005: 159–160) and its perceived dangers. We should strive to avoid the same reductionist forms of critique in our considerations of global intellectual property politics. Simple allegations of essentialism (strategic or otherwise), sitings of social construction, and accusations of romanticism reveal a profound lack of political sensitivity to the fields of power and leverage in which peoples struggle for recognition, resources, and opportunity: "Community is important because it is typically seen as a locus of *knowledge*; a site of *regulation* and management; a source of *identity* and a repository of *tradition*; the embodiment of various *institutions* (say, property rights), which necessarily turn on questions of representation, power, authority, governance, and accountability; an object of *state control*; and a theatre of *resistance* and struggle (of social movements and potentially of *alternative visions of development*)" (Watts 2000: 37, italics in original).

Given the intense density of its referents and connotations, community cannot be invoked as a unity—an undifferentiated political actor that speaks with

a single voice of truth to a singular site of power. It is better assessed in terms of the forms of governance (quality of representation, democracy, transparency, and accountability) it enables. Certainly many anthropological studies of bioprospecting and alleged biopiracy (Berlin & Berlin 2004, Brown 2003, Greene 2004, Hayden 2003a, 2003b) illustrate the performative politics, strategic entrepreneurialism, and perverse consequences that may ensue when knowledge is objectified and community reified. In the shadow of national laws yet to be promulgated and obligatory norms of consent and benefit sharing, those groups with the greatest access to powerful external actors have had considerably more leverage to assume representative roles for cultural collectivities. To the extent that international treaties and emerging legal norms demand that communities provide consent for the use of their knowledge and resources, such communities must be found, and if they cannot be located on one scale, those bearing obligations to secure consent will inevitably find "communities" at another scale who are prepared to bargain.

Nonetheless, as Joshua Rosenthal (2006) points out in an exploration of collaborative biodiversity research projects, difficulties in locating appropriate communities are better understood in terms of the presence or absence of a clearly defined governance hierarchy that establishes consenting authority. Such authorities may change over time, different communities may share knowledge traditions, and national laws may fail to recognize indigenous governance structures, but these issues are far from insurmountable. Autonomous, established, credible, and politically representative indigenous governance systems with participatory processes exist in many parts of the world, if only at the village level; where political institutions do not exist to facilitate deliberations among and between such communities to provide consent, he suggests that activists and researchers have a responsibility to support their creation (126). This is a task that is increasingly taken up by diverse transnational agencies.

NGOs and Indigenous Politics

International institutions and NGOs clearly play important roles in the process of mobilizing communities to claim rights to resources and traditional knowledge. Indigenous peoples 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 capitalist accumulation through their dispossession. For some scholars, it seems that the existence of foreign agents and external interventions in the political emergence of indigenous agencies and identities makes such politics automatically

suspect. For example, geographer Raymond Bryant (2002) calls our attention to the role of NGOs in the politics of biodiversity governance where implementation of the Biodiversity Convention has enabled new forms of governance in which indigenous persons were positioned, first as "partners in parks management," and then as "custodians of ancestral domains." National indigenous rights NGOs secured ancestral domain claims and community forest stewardship agreements while tutoring indigenous groups in the political means of asserting claims and in the arts of negotiation.

The NGO effort to document ancestral domains by mapping natural resources and their local cultural usages in the Philippines, Bryant feared, constituted a voluntary provision of a large mass of hitherto little-known data that would inevitably enable greater state control and surveillance in these areas. Bryant cautioned that peoples might be tied to territories (particular, usually marginal environments) and their rights to resources frozen according to knowledge gleaned only at one particular point in time. Still, it is important to understand that the Ancestral Domain Program was a response to the perceived moral and political *shortcomings* of the previous (1985–2000) foreign-donor-led Integrated Protected Areas System (IPAS) conservation project. Under that system, local communities were seen as in need of education, and their capacities were "enhanced" by a range of third-party experts. Scientists specified which areas needed protecting, where priorities should lie, and what values sites should be accorded, while mapping and monitoring these areas using information technologies in which their own capabilities were valorized. Local residents' access to resources was dictated by outside evaluations of local livelihood activities as biodiversity-enhancing or biodiversity-endangering. Community leaders and sympathetic NGOs feared that resource-based livelihoods would be jeopardized by external agents unable to appreciate worldviews that sustained livelihoods based on fishing, hunting, agriculture, handicrafts production, or the collection of birds' nests.

The lack of opportunity indigenous peoples were afforded to influence the design of this system seems to have spurred a parallel effort to map traditional territories considered politically_crucial to indigenous communities bent on establishing rights to ecosystems whose conservation they deemed their own accomplishment and responsibility. Given this history of environmental governance, the Ancestral Domain Program, which affirmed local people's knowledge and recognized local resource entitlements, was considered a big improvement. Such affirmations might have been especially welcome because they resonated with a global rights-based indigenous movement that was accruing adherents and political influence in this country by the early 1990s.

The Indigenous People's Rights Act of 1997 recognized those indigenous

to the Philippines as distinctive peoples with distinctive traditions, laws, and practices. Still, the process of settling indigenous ancestral claims was a protracted one and "there were genuine concerns that protected conservation areas would be finalized prior to the settlement of ancestral claims" (Bryant 2000: 691). Although ancestral claims do not provide full legal control over resources, they are considered important milestones on the way to a comprehensive settlement of indigenous claims. For rural peoples in the Philippines, as elsewhere, conservation is only meaningful if it is part of a wider recognition of their occupancy of relevant territories and the ways in which they have lived within them. To the extent that people have managed historically to protect their ancestral domains, they have thereby also protected its biodiversity, and only if they can protect their livelihoods are any partnerships feasible. Conservation and protection, I suggest, are tropes that serve to marshal one set of social actors' concerns about pending resource scarcity to meet another set of social actors' anxieties about maintaining livelihood security.

It is not difficult, then, to see why landscapes become culturalized so that they bear the distinctive signature of a traditional community, whose livelihood practices, recoded as distinctive management systems, require recognition and conservation. Safeguarding local resource use is given a different priority and articulated with a larger movement of rights-based politics when it is recoded as recognition of an aboriginal cultural attachment to territory. Greater respect for local decision making—increasingly recoded as respect for customary law—is but one example of how neoliberal discursive resources are being politically shifted to serve the interests of local political autonomy. A full exploration of this phenomenon would need to be situated in a larger discussion about the increasing number of peoples with "substantive economies" (Nash 2001) who have embraced an indigenous identity and thus come, by invitation or otherwise, to reflect upon the nature of their cultures when resisting or negotiating their incorporation into new forms of "market citizenship" (Coombe 2010, Harvey 2001).

Biodiversity protection has always been coupled with new forms of capital accumulation (McAfee 1999). In the Philippines, as elsewhere, these included the promotion of bioprospecting and ecotourism projects as alternatives to logging and fishing (Bryant 2000: 684). As a consequence, the Ancestral Domain Program put the protection of indigenous peoples' intellectual property rights squarely on the table. The regime clearly tied biological to cultural diversity, promising that recognition of local knowledge would revitalize traditional customs and patterns of sharing knowledge. While the former IPAS regime used the crisis of species extinction to impose technical solutions, the new initiative focused on the cultural meaning surrounding specific

socionatural activities, asserting an integrated and localized sense of "nature-culture" in which local cultural narratives about emplaced group history were central (ibid.). For peoples who have long been defined as objects for state intervention and management, the capacity to self-identity and to tell their own stories about the places in which they have lived—and to map their own histories of association with place—is politically significant. Bryant himself provides evidence that this process worked to build group identity and esteem and strengthened a sense of cultural community among some peoples as well as a new appreciation for their own knowledge (ibid.: 700). In short, even if they had no cultural identities as communities that preexisted this legal process, some empowered communities with a possessive relationship to their culture emerged as a *consequence* of this project.

Concessions wielded from the state in the form of self-governance rights, Bryant suggested (2002: 280–281), were primarily effective as means of incorporating indigenous peoples into the "normal" practices of Philippine political life. Recognition from the state, however, is hardly an insignificant matter for many indigenous peoples. Visibility may be politically preferable to invisibility but only if it is accompanied by voice. Ironically, it is precisely *as* "traditional" communities with unique contributions to make that many social groups are receiving state and international attention as full participants in "modernity" and the alleviation of its crises (see also Coombe 2010). Admittedly the provision of extensive maps, the location and traditional usage of biodiversity resources, and other knowledge and information to the state is accompanied by certain risks, particularly if the state refuses to respect international principles of indigenous rights and opens up ancestral territories to exploitative encroachment. Arguably this becomes more difficult to accomplish under the increased international scrutiny that environmental and indigenous rights regimes invite. In their larger struggles for autonomy, moreover, indigenous peoples may inscribe their own forms of governance within neoliberal management schemes (O'Malley 1996) that resist and deflect state agencies. By virtue of alliances forged with other indigenous peoples in indigenist politics (Niezen 2003), they may also share these strategies in quests for new forms of sovereignty within and beyond the modern nation state.

Perhaps the real problem for peoples in the Philippines was not their sudden visibility but the lens through which they were viewed. To the extent that global environmental institutions constitute "communities," they have a tendency to view them "from above" based on a series of visualization methods or "state simplifications" designed to make communities "legible" (Brosius 2006). States and international organizations produce modern global templates that tend to "overwrite the specificities of location" (ibid.: 228) even when they

attempt to validate knowledge that is traditional or local. As implemented, the Philippines Ancestral Domain Program, didn't merely misrepresent local political realities but fundamentally misrecognized the nature of the traditional resource use it purported to respect by assuming a simple relationship between a bounded territory and a bounded group. Indigenous notions of land tenure, however, appeared to be based upon practices and expectations rather than boundaries; they were dynamic and shifting rather than fixed or static, and they anticipated multiple contemporaneous uses rather than distinct and fixed zones of usage (Gatmaytan 2005: 463).

The irony is that legislation that "was supposed to be the state's answer to the indigenous people's demands for respect for their cultures" by demanding a monolithic national grid of group communal ownership in the face of local complexities and contingencies imposed uniformity in the face of cultural difference (ibid.: 468–469). For decades, peoples who identified as indigenous in the Philippines demanded state recognition of their rights to self-determination, an international concept that includes customary territorial and resource rights. The original political demand for self-determination, however, was reduced to a mechanistic legal procedure for determining who owned what lands; by linking simple notions of group recognition to specific parcels of land, communities and territories were indeed formed, but indigenous tenure systems were ignored as the basis of these distinctive substantive livelihoods. Moreover, recognition of the distinctive contribution of indigenous peoples to the national political community was avoided. Lawyers and NGOs who "interposed themselves between a state with little institutional cultural sensitivity and indigenous peoples and communities who are still developing their own links to the state, media, and other sources of power" (469) and thereby arrogated to themselves the task of translation were complicit in this process.

At first glance, it may appear that we have strayed a long way from intellectual property issues. However, I would suggest that the academic literature on community in environmental politics is important for a consideration of indigenous political and cultural rights struggles and their intellectual property interests. This is not simply because it provides cautions and homologies but because the agencies, institutions, and principles of environmental governance preexist those of intellectual property, intangible heritage, and cultural diversity protection in so many parts of the world. Environmental regimes may precede legal recognition of indigenous peoples and their rights and have occasionally been the pretext for them. The subjects, objects, and mappings these regimes have put into place provide templates that, for better or worse, are likely to shape expectations for and allocations of intellectual property rights. International policy makers ask governments, development agencies,

and NGOs to consider cultural diversity to be as endangered as biological diversity and in need of similar kinds of intervention; biocultural diversity is a hybrid policy metaphor that acknowledges their interdependence (Zent & Zent 2007). The metaphor of sustainability, drawn from the environmental field, has also been promoted as a more sensitive means for approaching cultural resources than those provided by the dominant informational matrix (Jaszi & Woodmansee 2003).

To return to the Philippines as our example, maps of community territories demarcated for the purpose of natural resource management, then elaborated to make claims to ancestral territories, were presented by the Philippines to the 1999 WIPO IGC meetings as natural boundaries for access and benefit-sharing agreements with respect to genetic resources and for the recognition of traditional knowledge. The Philippines also delivered a Community Intellectual Rights Protection Act (2001 draft) to the WIPO IGC as a planned sui generis law for the protection of traditional knowledge in 2002 (Gibson 2006: 139) drawing upon these preexisting regimes of environmental governmentality. The Intellectual Property Office of the Philippines continues to assert the country's status as a megadiverse country with valuable and unique biodiversity to protect, decries biopiracy, regulates access to genetic resources, asserts the desirability of developing its genetic materials, encourages commercial research agreements with transnational institutions, and urges local scientists and inventors to apply for patents on innovations derived from the country's unique species (IP Philippines 2008). This is the neoliberal policy matrix in which the CBD principle of sharing benefits with local and indigenous communities as custodians of these resources becomes the rationale for further amending "the Indigenous Peoples Rights Act to clarify and enhance the indigenous peoples' intellectual property rights over their knowledge and various uses of genetic resources" (ibid.).

Over the past fifteen years, however, Philippines-based NGOs and intergovernmental organizations such as the Tebtebba Foundation and the South Centre have worked tirelessly in international policy fora, often in coordination with environmental advocates such as the Centre for International Environmental Law, to insist that intellectual property rights in traditional knowledge instead serve sustainable development objectives and further establish indigenous human rights principles (e.g., CIEL 2007). Their leaders have moved these concerns from environmental into indigenous policy-making fora, where they join forces with representatives of aboriginal peoples from Canada and Australia and forest-dwelling and pastoral peoples from Africa as well as highly organized indigenous peoples from Latin America—to assert their own alternative visions of development. Again, neoliberal governance

structures are met with proposals for intellectual property articulated through the rhetoric of human rights.

Conversations about the interrelationship of biological and cultural diversity have also been ongoing in Colombia, where for two decades an insistence on going beyond intellectual property and rejecting trade-based models for understanding their resources and their knowledge have occupied the creative energies of legal, indigenous, and Afro-Colombian community activists (Correal 1998, Escobar 2008, Florez 1998, Hurtado 1998, Pombo 1998, Sertje 2003, Ulloa 2005, Valencia 1998, Wilshusen 2006). Despite increasing levels of violence and instability in the region, Afro-Colombian transnational advocates continue to stress the dangers of free trade agreements to rural communities and the continuing need for what they refer to as community intellectual rights (e.g., Murillo-Urrutia 2007).

Taking advantage of a new national constitution that stresses pluralism, cultural difference, and collective rights to land and cultural identity (Chaves 1998), Colombian activists seized upon perceived urgencies with respect to biodiversity preservation in the 1990s to forge collective "biocultural territories" through cultural mappings of local resource use that affirmed local livelihoods and values while asserting traditional knowledge as the basis for social reproduction, food security, and alternative development. Such "life projects" (Escobar 2008: 146–153, Blaser, Feit, & McRae 2004), as they were developed in the Colombian Pacific region, energized Afro-Colombian peoples who came to understand themselves politically as communities in this process. Alternative, community-authored representations of traditional practices of resource use have been prepared for environmental projects and planning purposes in many regions of the world. These community sustainability projects increasingly provide evidence for indigenous land claims, as well as territorial resource entitlements under national and international law (Colchester 2005, Poole 2005, Rocheleau 2005, Topatimasang 2005). We might anticipate that these "countermappings" (Peluso 1995) will also be used as evidence of and for the existence and authority of customary law with respect to knowledge and practices of traditional resources and the vernacular forms of intellectual property that recognition of such law might establish.

Conclusion

Communities and their properties are evolving; intellectual property and other emerging cultural rights issues will shape that evolution. Bruno Latour (2004) cautions us against being satisfied with a critique that begins and ends with revealing the social construction of naturalized facts; the critic, he suggests,

recognizes that "matters of fact are only very partial . . . and very polemical, very political rendering of matters of concern" (232). Further, "The critic is not the one who debunks, but the one who assembles. . . . The critic is not the one who alternates haphazardly between anti-fetishism and positivism . . . but the one for whom, if something is constructed, then it means it is fragile and in need of care and caution" (246).

The communities "empowered" by recognition of their traditional knowledge, their intangible cultural heritage, or their traditional cultural expressions may sometimes be artifactual, but they are still empathically real and have material and political consequence. 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 or further exaggerate local relations of social inequality. State powers may instantiate new forms of collective subjectivity for purposes of discipline and surveillance; NGOs may "discover" traditions in those communities where they are most comfortable working. We may, however, also find these newly "capacitated" communities making new demands on states, transnational movements, and international courts for constitutional recognition, political autonomy, and respect for customary law, to limit and enjoin extractive development projects and to demand new forms of citizenship as they have done in Amazonian and Andean regions of Latin America (Coombe 2010).

Intellectual property rights have conventionally been central to regimes of exchange and accumulation, but they also clearly figure as cultural rights within a wider range of human rights norms and (in emerging vernacular form) international indigenous rights regimes that provide normative resources that can be used to limit and shape neoliberal tendencies. States and corporations, NGOs, UN bodies, development aid institutions, and new social movements all have particular interests in "empowering" communities as entrepreneurs, owners, stewards, or custodians of what are perceived to be scarce and endangered forms of knowledge, difference, and distinction. While governmental practices may seek to attach groups to the kinds of heritage that can most easily be managed as commodifiable resources through a conventional intellectual property paradigm, they will 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).

Community intellectual property and sui generis rights may originally have been imagined and designed to incorporate so-called local communities more completely into regimes of market citizenship. However, to the extent that

these subject positions have been encoded as indigenous, they also invite local communities thus subjected to reflect upon their historical practices and to express their appeals in the normative discourses of right that global indigenist movements afford them. Processes of community formation are processes of political articulation. Diverse forms of sociality are engendered in relation to expectations for intellectual property; the communities located to serve the needs of neoliberal interventions may instead become involved in rights-based movements for livelihood security, political autonomy, territorial rights, and distinctive forms of citizenship. Situated in the friction (Tsing 2005) produced when neoliberalism flashes up against rights-based movements, the propriety of owning cultural resources as intellectual property promises to be the site of ongoing political struggle.

NOTE

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