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ABSTRACT

The International Labour Organisation, the United Nations and various indigenous Organisations have raised and/or objected to diverse criteria through which indigenous groups have been defined and the rights that should be accorded to them. This paper discusses the implications of these issues in relation to archaeological research and heritage management and uses this to position the other papers in this volume. Specific themes that are addressed include: the impact of colonialism and nation-forming on indigenous groups; the continuing influence of 19th and early 20th century social evolutionary concepts on the representation of indigenous groups and the role of archival material from this period today; the contrasting processes of cultural continuity and assimilation within 'dominant' societies in which indigenous communities have participated, and the effects that this has had on more recent claims over land rights; the cultural differences that surround the concepts of individual and community ownership, particularly in relation to copyright; the role of academia, museums and the media in the representation of indigenous people in the past and the present.

WHO'S INDIGENOUS?

In recent years the concerns of many indigenous groups have gained wide publicity and organizations such as the United Nations (UN) have recognized the frequent infringement of human rights suffered by indigenous peoples. But, the fact that indigenous peoples are at last gaining some political power has meant that even their claim to be indigenous may now be treated with suspicion. Two of the most frequent questions that students ask are 'Why should indigenous peoples be given special rights?' and 'Who decides who is, and who is not, indigenous?'. When sitting in a classroom in London, listening to the many and varied demands made by indigenous people, and the special treatment and support offered to some indigenous people, these questions seem important and valid. Some students have therefore been surprised when visiting speakers have been taken aback, or offended, by these questions. It is perhaps ironic that people who were dismissed or

marginalized as indigenous through classification systems imposed by explorers, colonial powers, nation states and academics are now using this same definition to fight to reclaim basic rights. But, it is even more ironic that people coming from areas of the world where descriptions such as 'Native' 'Aborigine' or 'Indian' have been, and frequently still are, terms of abuse, are now expected to prove or justify their indigenous status. When people are claiming specific, and sometimes exclusive, rights because they are 'indigenous', and increasing numbers of marginalized groups are 'becoming' indigenous (Hodgson, 2002: 1 p. 1037) it is legitimate to ask what is the basis of this claim. But, it is also important to ask: 'Who is asking the question?' 'Who is setting the definitions?' and 'For what reasons?'. All of the papers in this volume address the issues that surround previous categorization and current concepts of indiginiety and how these have affected past treatment of, and current demands by, indigenous peoples.

Archaeology is at the core of these debates, with the definition of 'indigenesness', the longevity of occupation and the continuity of cultural practices frequently resting on archaeological, historical and anthropological evidence. Yet, many indigenous people are suspicious of such academic pursuits, not least because archaeology and anthropology were themselves a part of the colonial process. These disciplines helped to categorize and describe indigenous peoples, information that was frequently used by colonial administrators as they deprived the indigenous inhabitants of their land, their rights and their dignity, and either sought to re-educate them to be subservient citizens or marginalize them at the edge of the dominant society's economic and social life.

Indigenous people are the descendants of the first occupants in each area of the world; there is obviously enormous diversity amongst all these different cultural groups, who have experienced different histories of expansion, conquest and colonization, and now have different aspirations and demands. The fundamental meaning of the term 'indigenous' as the original inhabitants of a particular place is relatively clear, but after many centuries of colonization, migration, intermarriage and acculturation, who is 'indigenous' today is frequently less clear. While many people in the world can claim descent from indigenous ancestors, it is not always clear who is included and who is excluded when discussing indigenous groups. Yet indigenous groups are demanding exclusive rights over human remains, artefacts and land, demands that prompt us to question the basis for these identity and ownership claims. At the start of the United Nations Decade for Indigenous Peoples in 1995, the UN provided a rough estimate of 300 million indigenous people in the world today, with the majority of these in India and China. But, as Arnold and Yapita (this volume) point out in their paper focusing on Bolivia, most statistics stating the number of indigenous people are unreliable, depending as they do on external categorizations, political expediency and a lack of detailed information. Arnold and Yapita also draw attention to how different groups in the Andean highlands have drawn upon different periods in history when constructing their diverse claims to indigeneity. Some place greater emphasis on their kinship and community of origin, whereas others

place greater emphasis on racial differences and language use within urban and industrial settings, and political activism.

The meaning of terms such as 'Native', 'Indian', 'First Nation' or 'Aborigine' varies depending on the country or people being referred to and the context in which the terms are used (in academic discourse, national law, to sell arts and crafts or during a social conflict). Such variability, imprecision and flexibility is not surprising, given the wide range of groups and complex histories that are being referred to, but it does highlight one of the problems inherent in developing universal approaches to indigenous peoples' rights (Bowen, 2000). In the past, the African Commission on Human Rights has insisted that all Africans are indigenous to Africa and that no particular group could claim indigenous status, and in this volume Abungu makes a similar argument. However, Kenya declared the visually distinctive and politically powerful Masai as their indigenous population for the 1991 United Nations' Year of Indigenous Peoples, even though they probably only migrated into the region that is now Kenya some 300 years ago. Yet, like other indigenous groups, they have a history of cultural distinctiveness and marginalization by the nation state, they 'self-identify' as indigenous, and increasingly NGOs and others are referring to them as indigenous (cf. Hodgson, 2002). Like Pueblo societies who migrated from Anasazi sites, or Quechu-speaking communities that were relocated by the Inka State, these groups are no less 'indigenous' for having moved from their previous homelands, and yet it raises the question as to how movement affects a group's 'indigenous' rights and what it takes to transform them into 'colonizers'. Largely in response to the United Nations focus on indigenous peoples, the African Commission on Human Rights set up a Working Group on the Rights of Indigenous People/Communities in Africa in 2001; the report from this working group, which was adopted in November 2003, primarily identifies the term indigenous with nomadic subsistence modes:

A misconception is that the term *indigenous* is not applicable in Africa as 'all Africans are indigenous'. There is no question that all Africans are indigenous to Africa in the sense that they were there before the

European colonialists arrived and that they have been subject to sub-ordination during colonialism. We thus in no way question the identity of other groups. When some particular marginalized groups use the term *indigenous* to describe their situation, they use the modern analytical form of the concept (which does not merely focus on aboriginality) in an attempt to draw attention to and alleviate the particular form of discrimination they suffer from. . . . those groups of peoples or communities throughout Africa who are identifying themselves as indigenous peoples or communities and who are linking up with the global indigenous rights movement are first and foremost (but not exclusively) different groups of hunter-gatherers or former hunter-gatherers and certain groups of pastoralists. (African Union, 2003: 62–63)

Perhaps academics should not be too quick to critique the precise justification used to claim indigenous status, as to do so would undermine the very real political and moral power that previously marginalized indigenous people are finally gaining at local, national and international levels. However, although it is understandable to use any methods available to fight for the rights and needs of all marginalized and vulnerable populations, we should be careful of grouping them all as ‘indigenous populations’. Firstly there is a danger of equating indigeneity with poverty. The homeless, jobless and exploited peoples of the world include recent migrants, Creole and others, who may quite justifiably consider the use of indigenous, ethnic or racial identity claims to demand basic social and economic rights to be a divisive influence on a more fundamental class struggle. Although a primary aim of most secondary colonizers has been to acquire the wealth of the indigenous population (primarily their land, but also livestock, raw materials, labour and artefacts), some indigenous populations have managed to retain or regain some of their wealth. For instance, although the Pequots were so decimated by English colonists in 1637 that they were thought to be extinct, with their members killed or placed in slavery under the control of other Native American groups, those placed under the Mohegans eventually became known as the Mashantucket (Western) Pequots and have subsequently won back their reservation lands and now have one of the largest casinos in the USA, funding a major museum and making tribal members much richer than most North Americans. The

Mashantucket Pequots, like the richer Saami herders, could hardly be called marginalized or vulnerable, but they are proudly indigenous. Secondly, archaeologists and other academics are increasingly being asked to give evidence in court to assess the legitimacy of indigeneity claims, where their evidence may be critical in making major decisions (Leclair, and Sutton, this volume), it may therefore undermine more legitimate claims if archaeologists are too carefree with the use of the term ‘indigenous’.

DEVELOPING DEFINITIONS

In many countries of the world indigenous people continue to be among the poorest and most marginalized members of society who are particularly vulnerable to economic exploitation and disenfranchisement. It is for this reason that organizations such as the International Labour Organization and the United Nations have drawn attention to the predicament of such peoples. In raising awareness about indigenous rights these organizations have, at various stages, tried to describe and define indigeneity and their attempts to do so have been the source of debate and dispute, as various nation states, aid organizations and indigenous groups have first raised and then objected to the implications of diverse criteria (see Hodgson, 2002).

In the International Labour Organization’s (ILO) Indigenous and Tribal Populations Convention 107 of 1957 ‘tribal and semi-tribal’ populations were described as ‘at a less advanced stage than that of other sections of the national community’ (ILO, 1957: Article 1:l[a]) defining *semi-tribal* as those ‘groups or persons who, although they are in the process of losing their tribal characteristics, are not yet integrated into the national community’ (ibid.: Article 1.2). A key objective of the 1957 Convention was to ‘facilitate ... their progressive integration into their respective national communities’ (ibid.: preamble). This 1957 convention expressed the widely held assumptions of the period: that indigenous people were primitive, underdeveloped peoples who should be protected during the period of assimilation into the norms of civilized society. However, with an increasing participation of indigenous representatives in the ILO, Convention 107 was replaced in 1989 with a

new Indigenous and Tribal Populations Convention, number 169. Convention 169 has probably been the most widely referenced, and influential, statement of indigenous rights, providing a basis for continuing campaigns at national and international levels. It removed the patronizing assumption that indigenous people would eventually abandon their customs and identities, in favour of asserting indigenous peoples' rights to regain their autonomy and maintain their distinct society. The 1989 Convention recognized the 'aspirations of [indigenous] peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages, and religions, within the frameworks of the States in which they live' (ILO, 1989: preamble). The ensuing Articles outlined a broad set of governmental responsibilities with regard to indigenous rights, including: a preference for customary legal solutions; recognition of the rights of indigenous peoples to ownership, possession and access to their traditional lands and resources; prevention of discrimination in the terms, practices and benefits of employment; government provision of adequate and appropriate health services and educational programmes in co-operation and consultation with the people concerned; and support for indigenous language instruction for children. Convention 169 defined Indigenous Peoples as:

- (a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
- (b) peoples in independent countries who are regarded as indigenous on account of their descent from populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. [ILO 1989: Article 1.1]
- (c) 'self-identification as indigenous, or tribal, shall be regarded as a fundamental criterion for determining the groups to which the provisions of the Convention apply' (ILO, 1989: 1. 2).

In 1982 the United Nations established a Working Group on Indigenous Populations which prepared a Draft Declaration on the Rights of Indigenous Peoples. Partly in response to the strong protest by the indigenous peoples throughout the Americas against 'celebrating' the 500th anniversary of Columbus's 'discovery' in 1492, the United Nations declared a Decade for Indigenous People (1995–2004), and in 2000 the UN established a Permanent Forum on Indigenous Issues.

The United Nations has been unable to develop a legally binding definition of indigenous peoples that the individual nation states and indigenous groups have been prepared to ratify, but the UN frequently quotes the definition proposed in 1986 by José Martínez Cobo (Special Rapporteur to the UN Economic and Social Council Sub-Commission on Prevention of Discrimination and Protection of Minorities):

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that have developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems. (Cobo, 1986: 379)

Cobo (1986: 380) goes on to outline how to determine 'historical continuity':

This historical continuity may consist of the continuation, for an extended period reaching into the present, of one or more of the following factors:

- (a) Occupation of ancestral lands, or at least part of them.
- (b) Common ancestry with the original occupants of these lands.
- (c) Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, life-style, etc.).
- (d) Language (whether used as the only language, as mother tongue, as the habitual means of

communication at home or in the family, or as the main, preferred, habitual, general or normal language).

- (e) Residence in certain parts of the country, or in certain regions of the world.
- (f) Other relevant factors.

All this contrasts with the unequivocal final statement that emerged from the Consultation on Indigenous Peoples' Knowledge and Intellectual Property Rights, in Suva, in April 1995, where the indigenous representatives refused to be confined by any single definition and stated: 'We assert our inherent right to define who we are. We do not approve of any other definition'. Or the Report of the African Commission's working group on indigenous populations in 2003, which stated:

This report does not aim at giving a clear-cut definition of *indigenous peoples*, as there is no global consensus about a single final definition. The global indigenous rights movement and the UN system oppose recurrent attempts to have a single strict definition. Other peoples of the world are not required to define themselves in similar ways, and the danger of a strict definition is that many governments may use a strict definition as an excuse for not recognizing indigenous peoples within their territories. For relevant comparison, it should be noted that the category *minority* is not defined in the UN Declaration on Minority Rights. (African Union, 2003: 62)

From this summary of influential international statements about identifying indigenous peoples a number of important issues can be identified:

- *Colonial origins*: indigenous groups are usually identified in contrast to secondary colonizers who have become the dominant society of modern nation states.
- *Less advanced*: attitudes to indigenous groups continue to be influenced by the 19th century social evolutionary concept of the 'primitive tribal savage'.
- *Descent and ancestry*: being able to prove kinship and descent from indigenous ancestors is assumed to be central to claiming indigenous rights.
- *Assimilation versus continuity*: adopting aspects of the 'mainstream' lifestyle is potentially seen

as a loss of identity, and indigenous groups are defined partly in contrast to the wider national society through asserting a continuity of tradition and land use.

- *Conflict with the nation state*: the assertion of land claims and distinct native legal and political structures is inherently a challenge to the nation state.
- *Ancestral lands*: homelands and some specific places are important to the identity of most indigenous peoples.
- *Ownership and copyright*: the desire to reclaim not just land but other resources (both natural and cultural) and protect these through communal ownership.
- *Representation*: after centuries of categorization and manipulation by others many indigenous people object to external attempts to define and limit who belongs to their group, and assert the right to self-identification and the ability to maintain and develop their own culture including the importance of educating their children using their native language.

Each of these issues has implications in relation to the material remains of the past and the work of archaeologists; it is this relationship to archaeology that provides the focus for the discussion below, which also seeks to position the papers in this volume in relation to current debates over the rights of indigenous peoples.

COLONIAL ORIGINS AND THE PEOPLE WITHOUT HISTORY

Current debates over indigenous rights are primarily framed within the legacy of European colonial expansion and the emergence of nation states. A major definition of indigenous peoples is that they are distinct from those peoples who took their land and marginalized them from the structures of governance. The appropriation of indigenous peoples and their resources by 'foreigners' started with the colonial act of 'discovering' new lands and the renaming of 'native' places. During the process of colonization, indigenous groups were commonly subjugated, classified and regulated by external cultures, and this was frequently the defining process by which indigenous cultures were described and

represented as 'other'. Perhaps the most significant 'difference' was religion, as it was a papal edict that provided a moral and legal justification for Christian nations to impose missionaries and obligations to trade on non-Christians; any resistance to this provided an excuse for full conquest. The papal decree or charter referred to as the bull *Romanus Pontifex* that Pope Nicholas V issued to King Alfonso V of Portugal, specifically sanctioned and promoted the conquest and colonization of non-Christians and their territories. On May 4th 1493 Pope Alexander VI issued bull *Inter Cetera*, which granted Spain the right to conquer the lands that Columbus had 'found', as well as any lands that Spain might 'discover' in the future, with the single proviso that Spain must not attempt to establish its dominion over lands that had already 'come into the possession of any Christian lords'. While pious Christians from Bartolomé de las Casas ([1552] 1992) onwards have been important defenders of the rights of indigenous peoples, religious conversion has provided a central excuse for the destruction of indigenous social and religious structures. Indigenous belief systems regarding ancestral remains or sacred objects were dismissed as pagan superstitions and idolatrous practices, justifying their destruction or their removal to museums.

European colonizers encountered hunter-gatherers such as the San of South Africa, the Selk'nam of Tierra del Fuego and 250 or more language groups of Australian Aborigines, as well as large complex societies such as the Aztec and Inca states. From the colonizer's point of view, all these peoples were 'Natives', but different colonizing nations, encountering different societies at different times responded to these indigenous groups in many different ways. This focus on the colonial process can make the identification of indigenous peoples in Australia and New Zealand, where colonization took place relatively late and the primacy of Aboriginal and Maori occupation is well understood, seem much clearer than in places with written documents recording successive movements of different peoples in India and Europe, or the complexity of a sequence of expansionist states in Central and South America. Yet politics is stranger than fact. The British colonizers of Australia declared the land *terra nullius*, denying what we now know to be at least 40,000 years of

occupation by aboriginal populations. Until 1967 Australian Aborigines did not have the vote and were not included in the census even though they were conscripted into the military. It was not until the Mabo decision of 1992, that the High Court of Australia conceded that the Aborigines had ownership of the lands prior to 1788, leading to a continuing debate about the return of Native Title (see Sutton, this volume). Whereas the British colonizers of New Zealand negotiated with the Maori chiefs and drew up the Treaty of Waitangi (1840), which at least guaranteed Maori citizenship and referred to Maori self-government. The Treaty, with its somewhat different wordings in the contemporary English and Maori versions, has returned to prominence with the setting up in 1975 of the Waitangi Tribunal, which has a mandate to identify and define the meaning of the principles of the treaty, including settling recent land claims. Earlier in North America the British had been forced to recognize the sovereignty of distinct Indian Nations over discrete territories, drawing up separate treaties such as the Treaty of Albany (1722) and Treaty of Lancaster (1744) with the Six Nations, and the Treaty of Logstown (1752) with the Delaware and Shawnee. In 1763 King George III issued a Proclamation that prohibited further settlement west of the Allegheny Mountains, and for those settlers seeking further land holdings this was one of the contentious pieces of British legislation during the war of independence. Even with the same colonizing power, the degree to which indigenous groups were recognized and negotiated with has been very different.

The distinction between indigenous peoples and others is a continuing reminder of the legacy of long-term processes of human colonization. However, the conditions of colonization are constantly changing (Gosden, 2004): the factors that influenced the first humans to move 'out of Africa', the movement of peoples and ways of life that characterize the development of agriculture and urban societies, the expansionist states of Europe, Africa, Asia and America, and the continuing economic and political incentives for migration today, have led to very different encounters between human groups in each specific situation. A major factor that characterizes the period of colonization by European and other

states was the acquisition of indigenous land and the imposition of colonial rule; however, in cases such as the Andean Ayllus and Maori chiefs, indigenous elites retained some power during the colonial period and the decline in native jurisdiction was most fully realized during the succeeding periods of independence and nation building.

For many parts of the world the colonial period was characterized by the imposition of Western bureaucracies, particularly the use of written records. The traditional separation of the historical and anthropological study of colonial and later periods from the archaeological study of pre-history was justified both by the disjuncture between the study of pre- and post-European contact and the primacy that we give to the use of textual evidence, even though the place and many of the people were the same. Archaeologists have contributed to breaking down these boundaries in order to offer a critical appraisal of the colonial process in each specific instance and question the documentary records created by the colonizers through a detailed analysis of the archaeological evidence (Funari *et al.*, 1999; Gosden, 2004). Recent years have also seen a re-appraisal of documentary evidence for a wide range of indigenous rebellions and resistance to colonization, including the using of colonial legal structures to fight for indigenous rights (e.g. Stern, 1987, 1993). Nowhere is the primacy of colonial texts stronger than within courts of law. Despite the care and precision with which reported speech is used in many oral cultures, most courts have considered this oral history as hearsay, in comparison with the validity given to the documents of the colonizers. However, the courts of many countries are now giving much greater legitimacy to both the oral traditions of indigenous groups and the use of archaeological evidence. As Leclair (this volume) describes in his analysis of legal disputes over native land claims, Canadian law has shifted to a cautious acceptance of oral histories as valid evidence; the identification and interpretation of archaeological evidence is also considered important, but concern is expressed because it may be insufficiently precise to establish proof of occupation by ancestors of a specific modern group. Archaeology provides an important source for understanding indigenous society prior to the colonial period, however identifying indigeneity implies an ability to categorize and separate prior local cultures

from later 'intrusions' or the remains of native activities during the colonial period. Even distinguishing between the artefacts or human remains of indigenous peoples and colonizers is not always self-evident. The initial identification of Kennewick Man by Jim Chatters as of 'European type' (although latter dated to between 7200 and 7600 BC) has shown how what at first seem innocent analytical labels can bring with them highly loaded cultural values and assumptions (Hurst Thomas, 2000). Similarly, the handmade, unglazed pots originally referred to by Noël Hume (1962) as Colono-Indian ware and thought to be of Native American manufacture are now more commonly referred to as Colono ware and widely believed to have been largely made and used by African Americans, because of the similarities with some West African pottery and the preponderance at slave plantation sites (Ferguson, 1992). Equally, archaeologists have frequently referred to the artefacts and sites of successive periods as distinct cultures (e.g. the Satsumon as the pre-historic Ainu, named after a 'type-site' where the pottery was first identified, or the Anasazi as the ancient Pueblo society that originates from a Navajo term meaning 'enemy ancestors'). While there may be important debates over what the changes in the form and function of artefacts in successive phases mean in relation to cultural change, the terminologies frequently serve to separate indigenous peoples from their pasts. As the discourse between archaeologists and indigenous people shifts such categorization will become more problematic, as archaeologists feel less justified in imposing external classifications upon local understandings of oral history, ancestral remains and sacred sites.

PRIMITIVE SAVAGES? CATEGORIZING 'TRIBAL' PEOPLES

A central feature of 19th and early 20th century social evolution was the use of indigenous societies, encountered during the period of European colonial expansion, to illustrate and explain the 'early stages' in human development. Following the tradition of Lubbock's (1865) *Prehistoric Times; As Illustrated by Ancient Remains and the Manners and Customs of Modern Savage*, indigenous people provided the living examples to be compared with the archaeological evidence of 'our' primitive past.

Every social evolutionary typology identifies 'progress' within aspects of the economic, social and religious organization of past societies, leading from savage mobile hunter-gatherers to the hierarchy and specialization of urban civilization (e.g. Morgan, 1877). In fact, all these models reveal an ethnocentric bias of identifying the inequities of colonialism and capitalism (such as hierarchical societies, urban settlements, bureaucratic record keeping, industrialization and trade) as central features of social progress that mark the achievements of civilization. 'Tribal' groups were characterized as primitive because they had not 'achieved' the hierarchical organization and economic exploitation that characterized Europe. Although *The Origin of the Family, Private Property, and the State* (Engels 1884) offered a Marxist critique of the emergence of capitalism, the evolutionary categorization that it adopted also became the dogma of Soviet archaeological and anthropological investigations (Grøn, this volume). The Ainu of Japan, the Selk'nam of Patagonia, the Evenks of Siberia and Australian Aborigines have all been used as models for European and other prehistoric societies. To illustrate Darwin's Theory of Evolution, collectors vied for the body parts of indigenous populations to classify human diversity in museum displays (Fforde, 2004). Even today modern hunter-gatherers are frequently seen as direct analogies for Palaeolithic and Mesolithic societies, despite the fact that present-day hunter-gatherers have been marginalized onto the poorest land by settled agriculturalists, urban growth and industrialization (see Grøn, this volume). But these evolutionary categories were not used consistently, and it is primarily the 'otherness' of the native communities that was being identified. Thus the concept of 'tribe' is usually considered to be a stage during the social evolution from Band through Tribes and Chiefdoms to State societies (e.g. Service, 1962). However, in practice, the same term can be used for the vast Zulu state or small bands of Kung hunter-gatherers and it is used primarily to identify non-Europeans. A large percentage of the public today continue to view terms such as indigenous, aboriginal or tribal as implying a primitive life style. This raises important issues about the role of education and exhibitions in critically debating the connotations and uses of these terms in the past and

the present (see below), and requires us to critically consider how we can best use the documents, museum collections and photographs that were created within a social evolutionary framework (see Fiore, this volume).

The people we refer to today as the Ainu were first written about by Japanese sources, referring to the inhabitants of Emishi using the Chinese character *Toi*, which can be translated as 'eastern barbarian'; even the name Ainu has been considered derogatory. In the past the Ainu have been described as descendants of European Stone Age people, and today both Japanese and foreign archaeologists use the Ainu as a parallel for the 10,000-year-old pre-agricultural Jomon. Yet the Ainu (or the Satsumon as archaeologists have named the prehistoric Ainu) were involved in agriculture and in using iron before the expansion of the Japanese state (Crawford and Masakazu, 1987; Fukasawa, 1998: 12–13). This suggests that the Ainu hunter-gatherer life style was partly the result of political pressures from the Wajin who demanded Ainu fishing and craft products. But this image of the Ainu as non-agricultural people is now central to their self-perception, which emphasizes hunting and the bear ceremony (Siddle, 1996: 37) and in this volume Kaori Tahara discusses changes in the aspirations of Ainu, from apparently seeking assimilation within Japanese society to increasingly working to maintain the features that differentiate the Ainu from mainstream Japanese society and preserve their cultural identity (see also Katarina, 1993).

The widespread influence of these social evolutionary ideas, particularly the classification of indigenous groups as the primitive bottom rung on the evolutionary ladder, provided a false legitimacy to a wide range of colonial and national policies. The 'primitive' life style of hunter-gatherers and nomads was, it was assumed, inevitably doomed to extinction; the question for the authorities was, how to manage this transition. The 'Indian Problem' was to be cured by one, or more, of the four major strategies: extermination, intermarriage with Europeans, assimilation by bringing into the national economy as labourers, assimilation through separation and re-education of the children. It is a sad comment on the depth of this colonial legacy that it is precisely the degree of resistance to these policies that is being used to assess indigeneity

today. All of these policies were accompanied by the acquisition of much of the land occupied by indigenous groups. The land, like the people, needed to be 'improved' to become productive, so that through mining, planting, grazing and building the land could also contribute to 'progress'. This is the origin of the legal conception of *Territorium Res Nullius* or *terra nullius*, which stated that to be truly owned it was necessary that land be 'improved', whoever failed within some reasonable period to build upon, cultivate or otherwise transform their property from its natural 'state of wilderness' forfeited title to it. An argument that was justified with reference to ethnography and archaeology:

What perhaps is most impressive in each of the cases we have discussed is this; that the dispossession by a newcomer of a race already in occupation of the soil has marked an upward step in the intellectual progress of mankind. It is not priority of occupation, but the power to utilize, which establishes a claim to the land. (Sollas, 1911: 383, quoted in Bowler, 1992: 728)

In 1810 Chief Justice John Marshall in the USA used *terra nullius* to argue that portions of Native American 'Indian Country' that were not cultivated by indigenous peoples might be construed as unowned and therefore open to claims by settlers. This began to be used as the basis for forming reservations – multiplying the number of Indians by the land they could use 'productively' and declaring this aggregate amount as sufficient for Indian needs, thus 'releasing' any surplus for acquisition by others (Churchill, 2002). The enclosure of land holdings, the mapping of boundaries and the granting of land titles, each of which legitimated the separation of indigenous people from their land, were considered essential aspects of these developments. In Australia the doctrine of *terra nullius* was upheld until as late as 1992 and only now are native title cases being considered by the Australian courts (Sutton, this volume).

DESCENT AND ANCESTRY: BLOOD QUOTAS AND LAND RIGHTS

One response to asking individuals what makes them indigenous is for the speaker to name their

parentage back to their grandparents or further. As stated by the Khoi-San at the World Summit on Sustainable Development 'We are the original peoples tied to the land by our umbilical cords and the dust of our ancestors ...' (Kimberley Declaration, 2002 – see Ormond-Parker, this volume). The highly emotive language that justifies indigenous peoples' identity claims and their access to their lands through the blood of their ancestors is no different to how the British aristocracy justify their ownership of their estates and inherited titles; indeed descent from one or more common ancestors is one of the strongest ties within human society. Yet, two centuries of anthropological studies of kinship have shown how complex and variable the reckoning of familial allegiance can be. As well as descent, membership of a kin group may also be achieved through marriage and adoption, and the naming and claiming of ancestors is always open to negotiation. Also, the degree to which indigenous societies were integrated or divided prior to colonization is difficult to assess as the processes of colonization and resistance were frequently an impetus for a restructuring of indigenous societies and a strengthening of ethnic identities (Smith, 1986; Shennan, 1989). For instance, Grøn (this volume) mentions how the Russian authorities fostered differences between the ethnic groups in Siberia.

Although many indigenous groups express a strong interest in an individual's parentage or clan membership, this has rarely required proof beyond the aural testimony of the individual and the shared knowledge within the group of lineage reckoning. This is partly the basis of the current approach of government departments in Australia, where indigenous programmes are recognized on the basis of decent, self identity and the community in which someone lives identifying them as indigenous. The current approach is a response to the traumatic history of the 'Stolen Generation' in Australia, which primarily removed children that were thought to be of mixed inheritance – typically those with an Aboriginal mother and a European father – to be socialized into white society. Ward Churchill (1999) claims that in the USA it was the treaties set up by the federal government that first began to use blood purity as an official strategy to differentiate between those who were 'more' and those who were 'less'

Indian. Most Native American groups traditionally intermarried and adopted others such as children and captives into the tribe, including the incorporation of Europeans and Africans during the colonial era. The idea of reckoning indigenous membership in terms of blood purity derives from European concerns over racial differences and attempts to develop 'objective' criteria to classify people for taxation and land allocation. The treaties set up between the USA and the Indian nations between the 1830s and the 1860s 'gave' larger plots of land to those of mixed blood or those who had intermarried with Whites (and were thus expected to farm the land more successfully), whereas 'pure' Indians were given smaller amounts of land that were to be held in common by the tribe (Churchill, 1999: 48–49). In 1887 the General Allotment Act was intended to dissolve this collective ownership of Indian land in favour of individual property rights. The practice of allotting these land-grants focused on a blood quota, with most federal authorities refusing land to anyone that was less than a half-blood member of a specific Indian group; however, while 'mixed bloods' were given their land directly, full-blood Indians were not yet considered competent and, as an interim measure, their land allotment was to be held in trust by local Indian agents for a further quarter century (Churchill, 1999: 49–50). However, in 1934 the Indian Reorganization Act (IRA) legitimated the continuation of Indian reservation lands to be administered by federally designated tribal councils. The IRA constitutions for reservation lands applied the prevailing federal standard to define tribal membership by blood with a quarter-blood usually stated as the minimum. In time, this was reinforced by the tribal councils who felt the need to limit the number of people eligible for health care, benefits and land rights, etc. In 1990 the Act for the Protection of American Indian Arts and Crafts proposed that only people with at least one-quarter Indian blood or enrolled in a federally recognized tribe could describe themselves as 'Indian' for the purpose of authenticating the making and marketing of Native American crafts and artwork (Churchill, 1999). (Similarly when the National Indigenous Arts Advocacy Association (NIAAA) of Australia developed a Label of Authenticity for Aboriginal art in 1999, concerns were raised about how indigenous

artists would, or should, validate their 'authenticity' to others.) Thus some Native American concepts of who is, or is not an Indian have gone beyond a flexible concept of tribal membership to internalize some Euro-American concepts of racial purity.

Ward Churchill's (1999) review of the origins and development of blood quota as a measure of authenticity has gained a particular poignancy, as his own claims of Native American ancestry have been called into question in recent months. Churchill is a professor of ethnic studies at the University of Colorado, who has come into greatest prominence through suggesting that the 11 September 2001 attack on the World Trade Center was both a response to and a consequence of US violations of international law, disregard for human rights and violence abroad. Churchill claims descent from both the Keetoowah tribe on his mother's side and the Creeks on his father's. Although the Keetoowah Band requires that: 'a person must be 1/4 degree of Cherokee Indian ancestry or above to be a member of the United Keetoowah Band', in 1994 the Boulder campus chancellor of the University of Colorado concluded that in relation to employment the Universities policy considered self-identification as the most reliable indicator of ethnicity. However Colorado's Standing Committee on Research Misconduct is currently (May 2005) debating whether Professor Churchill has attempted to 'gain a scholarly voice, credibility, and an audience for his scholarship by wrongfully asserting that he is an Indian' (<http://www.colorado.edu/news/reports/churchill/report.html>).

In Tasmania the assumption that blood purity was central to indigenous status was used to claim that the death of Truganini, the 'last Tasmanian', marked the extinction of Tasmanian Aborigines in 1873. However, in the 1970s, descendents of indigenous Tasmanians who had married white settlers campaigned for the return of Truganini's body, which was eventually cremated in 1976. It is now widely accepted within the Tasmanian community that some 10,000 people have Aboriginal heritage. This has resonances within Fiore's article (this volume) as it has been claimed that the Yámana Indians from Tierra del Fuego and the Taino Indians of Cuba were also extinct. This may be because it is easier to be sympathetic about the fate of the dead than acknowledge the rights of the living, but when descendents are now geographically spread

with diverse life experiences and cultural identities it is also less clear what rights can or should be returned to them.

Lineal descent has gained an added significance within North American archaeology as the Native American Graves Protection and Repatriation Act (NAGPRA) states that human remains and artefacts can be reclaimed if the applicant can show either lineal descent or cultural affiliation with the burial.

- A lineal descendant is an individual tracing his or her ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian tribe or Native Hawaiian organization or by the common law system of descent to a known Native American individual whose remains, funerary objects, or sacred objects are being requested under these regulations. This standard requires that the earlier person be identified as an individual whose descendants can be traced. (NAGPRA, 1990: section 10. 14)

As Ormond-Parker (this volume) discusses in relation to human remains held within British institutions, claims for repatriation to descendant families are only possible if there is also a full and frank disclosure of all the documentation relating to the collections.

ASSIMILATION VERSUS CONTINUITY: GOING NATIVE IN THE NATION STATE

Another factor that distinguishes indigenous communities from other citizens of a country is continuity of some aspects of their traditional life style. In contrast to this, a major aim of many nation states in the 19th and 20th centuries was to incorporate their citizens within the norms of national society, and frequently the distinctive languages, laws, religions and economies of indigenous peoples were seen as a challenge to this aim. For this reason many nations adopted explicit policies to transform 'undesirable' aspects of native culture and incorporate indigenous people into the national economy. Frequently state education policies have been a primary tool used to bring indigenous children into the norms of national society and modernity (see Arnold and Yapita, this volume). As Tahara Kaori highlights in her discussion of the Ainu (this volume), some indigenous people adopted the aspirations of the time and sought

assimilation, however many others worked to maintain indigenous identities through active or passive resistance to these policies. Although indigenous people today articulate with national and world economies, many communities have adapted and maintained aspects of their cultures and some have sought to reaffirm their identities by retrieving abandoned traditions. But while the more traditional San of Southern Africa are able to use their distinctive life style and dress to argue for land rights and local self-governance, those San who have been incorporated into the urban economy and class segregation do not fit into essentialist models of indigenous groups; the rural and urban San have been able to combine resources in developing a pan-San indigenous movement but their distinctive histories and aspirations also raise tensions (Sylvain, 2002).

One of the most devastating influences on indigenous cultures has been the forced removal of children from their families, such as the Indian boarding schools of the USA where separation from Native American families was accompanied by a ban on speaking native languages and wearing indigenous dress, and where indigenous beliefs and histories were replaced by the doctrines of Christianity as well as forced labour. By the 1920s approximately 80% of Native American children in the USA were sent to boarding schools to be acculturated away from family and tribal influences (Hurst Thomas, 2000). Similarly from the 1800s till as recently as the 1960s, over 100,000 Aboriginal children were systematically removed from their parents and placed with white families in a policy that was actively supported by the British and Australian governments. Article II of the convention on the Prevention and Punishment of the Crime of Genocide, adopted by the United Nations in 1948, includes the forcible transfer of children from one group to another in its definition of genocide. In May 1995 the Australian National Inquiry into the past and present practices of separation of Aboriginal and Torres Strait Islander children from their families was established, supporting a very wide-ranging re-appraisal of the treatment of Aborigines in Australia. The resulting books recording individual experiences and reactions to the history of the Stolen Generations have recently been recognized as one of nine significant items of documentary heritage inscribed as Australia's contribution to UNESCO's Programme to protect and promote documentary material.

Where indigenous communities maintain continuities with earlier cultural practices these are often in spite of colonial policies that either removed indigenous people from their land and their families or marginalized them on poor quality reservation lands. It is therefore particularly ironic that it is now becoming a feature of legal battles for indigenous land rights in both Canada and Australia that the courts seek evidence for continuities in social, economic and religious practices within indigenous communities to justify rights of access to land (Leclair, Sutton, this volume). In a reversal of the assimilation policies of earlier periods, indigenous peoples now gain rights by asserting their cultural distinctiveness. Archaeologists, anthropologists and historians may be drawn in to identify evidence of continuity of cultural practices. Similarly the request for the return of human remains under the Native American Graves Protection and Repatriation Act of the USA stipulates that the applicant has to show some aspect of continuity of cultural affiliation in order to claim the remains. These claims can use the following types of evidence: 'Geographical, kinship, biological, archaeological, anthropological, linguistic, folklore, oral tradition, historical or other relevant information or expert opinion' (NAGPRA, 1990: section 10.14).

Archaeologists, anthropologists and heritage professionals could all have an important role to play in supporting indigenous efforts to maintain cultural continuity through promoting local languages (Arnold and Yapita, this volume), developing relevant aspects of indigenous economic activities (Kendall, this volume) educating future generations about their culture and history (Ramos Lopes, Abungu, this volume). Such efforts at maintaining and revitalizing indigenous culture are upheld as a right under the UN's Draft Declaration on the Rights of Indigenous Peoples (Article 12). While many museums played an important role in the nation building of the 19th and 20th centuries, Abungu (this volume) asserts their potential in revitalizing an interest in local cultural traditions for future generations of African children.

CONFLICT WITH THE NATION STATE

Many nation states emerged within the context of liberal reform where the descendents of the original

colonizers demanded to be freed from the economic and legal control of the colonial power. In many areas, such as Peru and Bolivia, once independence had been achieved new laws were enacted that consolidated settlers' land ownership, and removed much of the authority of native leaders and the distinctive legal protection extended to native communities in an effort to draw them into the national economy. For this reason any demand to 'indigenous rights' is inherently a challenge to National Sovereignty because it is a claim of primacy and a demand to rights that pre-date the forming of the modern state, its national laws, and the written titles of land ownership (see Leclair, and Sutton, this volume).

At the time of independence 'Indian Title' was well-recognized by the founding fathers of the USA and Thomas Jefferson (1793) conceded that 'The Indians [have] full, undivided and independent sovereignty as long as they choose to keep it, and ... this might be forever'; only the voluntary sale of title or concessions given through treaties could extinguish title or sovereignty (Catanzariti, 1992: 272). However, in 1831, Chief Justice John Marshall made a rather different ruling in the case of the *Cherokee v. Georgia*. After conceding that the arguments 'intended to prove the character of the Cherokees as a state, as a distinct political society, separated from others, capable of governing itself, has ... been completely successful', Marshall went on to observe:

Though the Indians are acknowledged to have an unquestionable and, heretofore, unquestioned right to the lands they occupy until that right shall be extinguished by a voluntary cession to our government, yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile, they are in a state of pupillage. Their relation to the United States resembles that of a ward to his guardian. (Marshall, 1831)

Although it could be argued that the very existence of a treaty suggests that both nations were equivalent sovereign states, this ruling clearly expresses the

'problem' that the newly formed Nation of the United States had in dealing with claims for self-determination within their national boundaries. These arguments remain pertinent to the power and authority of the native nations within the USA and were recently quoted by Justice Thomas in relation to the case of the US v. Billy Jo Lara, where he concluded 'The Court should admit that it has failed in its quest to find a source of congressional power to adjust tribal sovereignty. ... We might find that the Federal Government cannot regulate the tribes through ordinary domestic legislation and simultaneously maintain that the tribes are sovereigns in any meaningful sense. But until we begin to analyze these questions honestly and rigorously, the confusion that I have identified will continue to haunt our cases' (Thomas, 2004: 13).

When national institutions and laws fail, indigenous peoples may try to use international bodies to place pressure on their national government to recognize their 'indigenous' status (see Ormond Parker, and Tahara, this volume). Organizations such as the United Nations are in the process of generating international norms that seek to define and protect the rights that indigenous people should have over their cultural practices and material heritage. Through this process a new generation of indigenous peoples has grown up who are knowledgeable and competent in the areas of international diplomacy and legislation. However, one of the great hopes of the United Nations International Decade of the World's Indigenous People, which ended in December 2004, was the adoption of an international declaration for the protection and promotion of indigenous peoples' human rights. The working group met for its 10th session in Geneva in September 2004, but the adoption of the declaration was blocked by several governments. Two of the major sticking points have been Article 3: 'Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development' and references in several places within the draft treaty to the collective rights of indigenous peoples. These demands to self-determination, collective rights and indigenous law are seen as a particular challenge to the authority of the nation

state (Arnold and Yapita, this volume). The United Kingdom's government has been accused of acting in concert with the USA, Canada, New Zealand and Australia to prevent the concept of collective rights being enshrined in the declaration (Whall, 2002). To date no indigenous group has made any serious attempt to succeed from the nation states within which they have been incorporated; on the contrary, indigenous groups have largely worked through the legal frameworks of their nation states, relying on the moral pressure of international agreements and media coverage to place pressure on their governments and judicial systems to recognize indigenous rights (see Leclair, Sutton, Ormond-Parker, Tahara, this volume).

ANCESTRAL LANDS: WHO CONTROLS INDIGENOUS HERITAGE?

In recent years indigenous activism at national and international levels has led to a renewed focus on indigenous rights and the return of land to indigenous groups in many parts of the world. This has resulted in several prominent court cases, although providing strong evidence for a legal case that can demonstrate specific links between present-day indigenous groups and the pre-colonial occupants of the land is complicated (Leclair, Sutton, this volume). It is widely recognized that attributing artefact groups or 'archaeological cultures' to specific peoples in the past, and then to their living descendents today, is extremely difficult and politically risky (Shennan, 1989; Jones, 1997). This has enormous implications for the use of archaeological evidence and the testimony of archaeologists in court. Leclair describes how Bruce Trigger's advice that archaeologists should not accept oral histories uncritically, was applied in a very different context when it was cited extensively to undermine the use of oral tradition during a legal challenge to First Nation land claims in Canada. In another case, Richter's interpretation of archaeological evidence relating to Five Nations trading practices across the St Lawrence River became central to a legal claim over the right to continue cross-border international trade unhindered by importation duties (Leclair, this volume). No archaeologist can predict how their research, analysis and interpretation will be used by others, but archaeologists need to be more considerate of the

wider forum within which our work may be used. At the other end of the scale some anthropologists and archaeologists have worked actively with indigenous groups to support their claims, and Leclair also points out that within a court of law this may mean that these individuals will lose their potential status as expert witness because they have become too associated with the plaintiff's cause. An archaeologist's or anthropologist's primary duty to the well-being and care of the people they are working with may be best served by the clear reporting of evidence and the sensitive interpretations of their situation, but not by pushing ambiguous data to their interpretative limits.

The 'old' nations of Europe have frequently drawn upon their distinctive pasts to develop a sense of national unity, and during the process of gaining independence from colonial powers many 'new' nation states appropriated the heritage of their indigenous peoples as emblems of the state. This can be seen with regard to how Peru has portrayed the Inka as symbolic precursors of the modern nation state, how Mexico has adopted symbolism from the Aztecs and the Maya, or Rhodesia was transformed into the nation of Zimbabwe. For Bolivia it has been the site and culture of Tiwanaku that has provided the key symbols for nation building and, in this volume, Arnold and Yapita discuss some of the tensions that this raises for indigenous Bolivians who also identify with Tiwanaku and have revived ceremonies at the site and recently campaigned to return one of the enormous monolithic statues from the national capital of La Paz back to Tiwanaku. Similarly, Endere describes a revival of indigenous ceremonies and rituals at 'national monuments' in Argentina, and on some occasions the indigenous groups demand exclusive use of the sites so that these rituals can be undertaken in secret. Endere also discusses changes in law, policy and approach to indigenous heritage in Argentina, debating the important question of who owns and manages 'national' heritage when it is within the territory of specific indigenous groups and seen as 'their' heritage. This may include sites that were not previously known about by the group or necessarily constructed by their ancestors. For instance the three and a half million year old hominid tracks in the volcanic ash at Laetoli, Tanzania, discovered by Mary Leakey, have been adopted by the local Masai who revere

them and guard them on behalf of the Antiquities Unit of Tanzania (Stanley-Price, 2000).

It should be remembered that the 'conservation' of some World Heritage Sites and National Parks has been achieved by removing indigenous inhabitants. Many National Parks were created to preserve 'wildernesses', a concept similar to that of *terra nullius* that assumes a lack of permanent buildings and fences meant that the land was unaffected by the presence of humans and would be better protected by removing indigenous residents and preventing nomadic groups from using the area. For instance, Yellowstone National Park was created by expelling the resident Shoshone, and Blackfeet were removed from Glacier National Park, helping to develop an approach that has been exported to many other parts of the world (Spence, 1999). The conservation of archaeological sites and landscapes and their recognition as National or World Heritage has occasionally resulted in the removal of ownership and control from the local population who originally constructed them and previously maintained them (Endere, this volume). It is not surprising that indigenous people sometimes consider earlier archaeological work to have been little more than legalized grave robbing and land grabbing with the support and authority of national legislation to back it up (Watkins, this volume). This insult is compounded when information at the site describes the people who built and used it in some period of deep prehistory without discussing any links with the cultural traditions and the concerns of the living communities (Endere, this volume). In 2000 the Timbisha Shoshone Indians of California and Nevada regained 7600 acres of land, some of it within Death Valley National Park, to be held in trust by the USA for the benefit of the Tribe in recognition of 'the contributions by the Tribe to the history, culture, and ecology of the Park and surrounding area' (Timbisha Shoshone Act, 2000). The Tribe and the National Park Service will manage the Park land co-operatively, including a provision to temporarily close parts of the park when the tribe wish to carry out traditional cultural and religious activities. This is the first time that Native American ownership has been recognized within a National Park and Congress also stated that portions of

lands previously designated as 'wilderness' would be recognized as Timbisha Shoshone Natural and Cultural Preservation Area.

At the centre of these debates is the question of how national bodies that own, manage and/or publicize 'national' heritage can work with indigenous groups to include concerns about ownership and access to 'their' heritage. This may require a dualistic approach such as that of Norway, where successive Cultural Heritage Acts since 1978 have included legal protection for any Saami cultural remains over 100 years old, whereas most historical remains must be older than the reformation in 1537 to be given automatic protection. Or they may relate to specific territories such as Nunavut, Canada's newest and largest territory, established in 1999 to be a homeland for the Inuit, where the conservation of the archaeological heritage comes under the remit of the Department of Culture, Language, Elders and Youth, which aims to create 'a territory of strong, self sufficient communities that reflect traditional values and culture'. In relationship to World Heritage Sites the idea of an Indigenous Peoples Council of Experts was presented to the 24th session of the World Heritage Committee by representatives from Australia, Canada and New Zealand. The initiative was taken by indigenous peoples wishing greater involvement in the development and implementation of laws, policies and plans for the protection of their knowledge, traditions and cultural values relating to their ancestral lands, within sites now designated as World Heritage properties. This proposal was turned down by UNESCO's World Heritage Committee in December 2001; however, the debate about how to include indigenous peoples has had some influence on UNESCO's Convention for the Safeguarding of the Intangible Cultural Heritage adopted in 2003. This defines intangible cultural heritage as

the practices, representations, expressions, as well as the knowledge and skills, that communities, groups and, in some cases, individuals recognise as part of their cultural heritage. It is sometimes called living cultural heritage, and is manifested inter alia in the following domains: oral traditions and expressions, including language as a vehicle of the intangible cultural heritage; performing

arts; social practices, rituals and festive events; knowledge and practices concerning nature and the universe; traditional craftsmanship. The intangible cultural heritage is transmitted from generation to generation, and is constantly recreated by communities and groups, in response to their environment, their interaction with nature, and their historical conditions of existence. It provides people with a sense of identity and continuity, and its safeguarding promotes, sustains, and develops cultural diversity and human creativity. (UNESCO, 2003)

OWNERSHIP AND COPYRIGHT: WHO OWNS INDIGENOUS KNOWLEDGE?

There is currently a heated debate over the rights indigenous peoples should have to own and protect their resources, including genetic materials, artistic designs, music, ceremonies, artefacts or sacred sites. These issues have been debated particularly strongly within the World Intellectual Property Organization (WIPO), which has been discussing the protection, promotion and preservation of traditional cultural expressions for at least two decades. However, this debate has not yet resulted in a consensual policy at WIPO, largely because it raises major challenges in relation to most copyright law. The Western ideal of 'invention' identifies adaptations in creative art or technical advancement as individual originality. Copyright laws have been formulated to protect the innovative creations of specific authors for a prescribed period in order that the author can gain economic benefit from their innovation. This can be contrasted with those indigenous groups who consider the making of art or the breeding of plants and animals as a communal obligation. Here individual creativity may be acknowledged, but it is also the individual's duty to preserve the communal resource through appropriate use and by passing it on to succeeding generations within the group with an emphasis placed upon protecting customary knowledge and skills and occasionally restricting who uses them. However, copyright law has been developed to encourage rapid innovation, not to restrict access to collectively owned traditional knowledge and protect it from inappropriate borrowing (Blakeney, 1999).

Perhaps the best known of these debates has been in relation to Aboriginal art in Australia. The form

and style of Aboriginal art may be constrained by other members of the community to prevent the misuse or misrepresentation of the imagery, particularly where the designs are sacred or meaningful within a specific context. Aboriginal artists are free to create original pieces of commercial work, but the style and content of certain images may belong to a specific group and the context and use of the images may be constrained by traditional rules. Although there has been a long history of misuse and unauthorized reproduction of works of Aboriginal art, a number of cases in the Australian courts have extended some protection to Aboriginal artists through the Copyright Act. In 1988 Johnny Bulun Bulun and 13 others sued a T-shirt manufacturer who had used their designs. Although this case did not proceed to judgement, the out-of-court settlement for US\$150,000 was widely reported. In 1994 the copying of an Aboriginal design to decorate carpets led to a court case in which a large award of damages established that copying a part or the whole of an Aboriginal work was a copyright infringement. However, it was the view of the recently disbanded Aboriginal and Torres Strait Islander Commission that, despite these developments, effective protection of indigenous intellectual property was beyond the scope of existing laws. Problems with the application of copyright law can be seen in the case of The Reserve Bank of Australia being sued by the Galpu clan for using the design of a morning star pole on a commemorative banknote. Although the pole had been created by an initiated member of the clan, the Galpu asserted that the artist was under obligation to the clan to prevent the design of the pole from being used in inappropriate contexts. In this case the Judge expressed sympathy for the Clan's concerns, but stated that Australia's copyright law did not provide adequate recognition of Aboriginal community claims to regulate the reproduction and use of works that are essentially communal in origin (Blakeney, 1999). As another example, Blakeney (1999) discusses the painted images of the Wandjina, the Creation Ancestors of the Kimberley Aboriginal People, which form a notable part of the Kimberley area rock art. These images may be retouched or painted today, provided that appropriate deference is given to the ancient spirits. Although the Kimberley Aborigines believe that

inappropriate treatment of these images will cause death and devastation, there is currently no law to prevent the use of these images by commercial enterprises.

Knowledge about 'wild' plants with specific properties has been maintained within many indigenous communities, similarly crops and animals have been nurtured and developed during the thousands of years of labour involved in their domestication. This raises the question as to who should have the right to control or own modifications of these in the future. The 1975 European Patent Convention forbade the patenting of plant varieties both because small changes in plant varieties could not be easily patented as 'inventions' and because the freedom of farmers to breed and develop plant varieties was considered essential for food security and crop protection. The European Patent Office (EPO) started to grant some patents on plants and animals in the early 1990s, but in 1995 Greenpeace successfully brought a case against a patent on GM plants and the EPO's Court of Appeal confirmed its original ruling that plant varieties could not be patented. In 1998, in response to pressure from the biotech industry, the European Union (completely separate from the EPO) enacted a directive that explicitly allowed the patenting of living organisms, such as plants and animals (Directive 98/44/EC on the legal protection of biotechnological inventions) in direct conflict with those of the European Patent Convention. Restrictions on the patentability of plant varieties are not present in the patent laws of the USA, Japan or Australia. Previously, directives from Trade-Related Intellectual Property Rights (part of the World Trade Organization) required all countries to extend their patenting to include micro-organisms and microbiological processes, but permitted countries to exclude plants and animals and stipulated two major exceptions – breeders should be allowed free access to registered varieties during the period of experimentation, and farmers should be allowed to reproduce varieties for seed and even to sell the seed as long as this was not the main business of the farm. However, further revisions in 1991 to the International Agreement on Plant-Variety Protection (UPOV) allow nations to revoke either of these exemptions and in 1994 the US eliminated the farmer's exemption (Brush and Strabinsky, 1996: 15). Recently farmers in the USA have been obliged

to sign contracts that forbid them from replanting the seed they have grown, and Monsanto have taken farmers to court for re-sowing Roundup Ready Soybeans and even crops that have hybridized with their strains. Apparently unaware of George Washington's advice 'It is miserable for a farmer to be obliged to buy his Seeds; to exchange Seeds may, in some cases, be useful; but to buy them after the first year is disreputable.' (George Washington to his farm manager William Pearce, 16 November 1791). Multinational seed companies have used patenting law to gain rights over traditional crops; sometimes forcing farmers to pay for growing crop varieties based on local domesticates (Shetty, 2005), such 'improved' varieties are usually dependent on the use of expensive chemical fertilizers and pesticides (Kendall, this volume).

However, many indigenous and small-scale farmers have resisted these movements. For instance, the Bolivian government's attempt to introduce a Genetically Modified potato strain resistant to Cyst Nematode was thwarted by protest from politically active peasant farmers, who demanded that greater attention be paid to existing local varieties. At a meeting in Mexico in November 2004, environmental activists and indigenous representatives complained that the 15 research centres of the Consultative Group for International Agricultural Research, who hold seed banks of all the main crop varieties in the world, were building overly strong links with large biotechnology corporations giving them free access to indigenous crop varieties that were being genetically modified to develop expensive commercial strains. Perhaps in response to the protest in Mexico, the International Potato Centre (CIP) in Lima, Peru, recently returned commercial rights over potato varieties to Quechua-speaking farming communities. The 206 potato varieties will be 'repatriated' from CIP's collections to be maintained in a 'potato park'. As well as providing food for the six communities that jointly own the land in southern Peru, the 15,000 ha park will serve as a 'living library' of potato genetic diversity (Shetty, 2005). The agreement, which is the first of its kind, aims to ensure that the control of genetic resources is kept with local people, that it does not become subject to intellectual property rights in any form, and that the diversity of Peruvian potato varieties is maintained. This could lead to similar deals elsewhere to return rights in major

crops to the communities that domesticated them. While archaeologists have been very vocal about the trade in antiquities (which impacts on our own resource and livelihood) we have largely ignored the important political implications of our research into domestication, offering little criticism of commercial companies that have claimed ownership of indigenous crop varieties through relatively minor changes.

These arguments over copyright have also affected the ongoing debates about the ownership of human remains. Ormond-Parker (this volume) describes how the Australian Law Commission, following an earlier ruling in Britain, have overturned earlier assumptions that the human corpse was not an object of property and declared that body parts and DNA may be retained by institutions that have modified the sample through their skills and expert work. Like GM crops, access to the technical skills can be a route to claim the originality and inventiveness that justifies ownership, an argument that seems to echo previous claims that indigenous people's lands were *terra nullius* and could be claimed by settlers able and willing to 'improve' them using 'alien' technologies. Ormond-Parker considers the argument that genetic research may have benefits far beyond the indigenous community, but he highlights how rarely indigenous people have gained any benefit from such research. Only when indigenous people have given their 'free, prior, and informed consent' can such research be justified.

Conflicts over the ownership of human remains and artefacts, particularly grave goods, are now a familiar issue within archaeology and museum practice (Fforde *et al.*, 2002). One of the best-reported examples has been the ongoing work to repatriate the Zuni *Abayu:da* (the 'twin deities' *Uyuyemi* and *Maia'sewi*). The Zuni believe that after formal use these cylindrical wooden sculptures should be allowed to disintegrate and return to the land, their removal and conservation in museums was considered to be a major cause of tribal decline. The Zuni were prepared to take a long-term approach to retrieving the *Abayu:da*, negotiating with museums and collectors for their return and arranging a secure facility for their retention (Merrill *et al.*, 1993; Ferguson *et al.*, 2000). In this volume Edward Halealoha Ayau describes the reasons for reclaiming four wooden sculptures that had been removed from the burial cave of a high-ranking Hawaiian chief. These ancestral deities, *ki'i aumākua*, had been part

of a funerary assemblage in a burial cave and were removed from the cave to the Bishop Museum in 1905. *Hui Mālama I Na Kūpuna O Hawai'i Nei* (Group Caring For the Ancestors of Hawai'i) placed the *ki'i aumākua* back in the original cave. Sadly this cave has since been desecrated a second time and many of the funerary items were removed again. This raises important questions about the need to secure repatriated artefacts to prevent further theft. In other cases the communal ownership of artefacts and their return to indigenous owners has been upheld and protected by the law. For instance, the Aymara people of Coroma, Bolivia, own a wide range of ancient fine ceremonial weavings, which have been used to defend community land claims (Bubba, 1997; Arnold and Yapita, this volume), and the responsibility for caring for these rotates among families who take on positions of authority in the community. In the late 1970s, a number of these sacred garments were sold by individual community members put under pressure by North American art dealers. As both the USA and Bolivia are parties to the UNESCO conventions on cultural property, which prohibit commerce in items that are held communally and constitute spiritual and cultural patrimony, the sale by individual community members was deemed illegal and the items were eventually returned to Coroma (Zamora, 1996).

There is a widely accepted ethic that archaeologists have a duty to promote public access to sites and publish the results of their research; this ethic is particularly strong both because the research is frequently publicly funded and because the process of excavation destroys evidence. For instance, the Society for American Archaeology stresses that archaeologists should 'advocate use of the archaeological record for the benefit of all people' (SAA, 1996). But, this ethic is challenged by indigenous groups, who assert that access to sacred sites or ritual knowledge is an exclusive right belonging to certain members of the indigenous group. For instance, the Hopi have prevented the release of archaeological and oral history reports for scholarly research or public interest, restricting them to use within the tribe (Ferguson *et al.*, 1995). The prevention of public dissemination of confidential information can also be endorsed by the court, for instance in 1976 the Australian court prevented the sale of the book *Nomads of the Desert*

by the anthropologist Dr Mountford, which included descriptions and photographs of Pitjantjatjara sites, artefacts, totemic geography and art. The court believed that disseminating this information was a breach of confidence and it went on to state that 'revelation of the secrets to their women, children and uninitiated men may undermine the social and religious stability of their hard-pressed community' (McDonald, 1997). Here, indigenous desires to retain ownership of knowledge conflicts with our ethic to promote the public dissemination of knowledge (Tarlow, 2001).

MAINTAINING CULTURE OR PRESERVING MATERIAL CULTURE?

Archaeologists, heritage managers and conservators all profess as a primary aim their intention to preserve the material remains of the past. This can be compared with the continuing struggle of most indigenous people to preserve their culture. Frequently these two approaches are very closely allied, with archaeologists and indigenous groups working closely together to preserve ancient sites. However, there are times when the potential shared interests of these groups are confronted by somewhat different priorities. In this volume Wharton describes how indigenous responses to conservation have sometimes objected to the focus upon preparing objects for static display rather than for cultural use, but he also highlights how museums have frequently preserved the patina and damage on indigenous remains, whereas European paintings, weavings and sculptures are restored to the original glory of the 'artists intent'. These differences in conservation practice appear to reflect a bias in how museums represent indigenous and Western cultures.

There may be times when the priorities of indigenous communities will seem at odds with our concerns to preserve the vestiges of past activities. In Sri Lanka a statue of the Buddha, which had been defiled by a tourist sitting on it, was 'restored' by washing it with milk, a process that removed centuries-old painted decoration (Wijesuriya, personal communication, 2001). Those of us concerned for the preservation of the evidence of past activities may be horrified by this, but this act of ritual purification is understood to have restored the statue

back to its divine state (cf. Wijesuriya, 2001). Wharton highlights how various indigenous groups may have extremely different ideas about what should and what should not be conserved for posterity, and there are also differences of opinion within indigenous communities. Ayau (this volume) echoes the Zuni in stating that ‘our duty is to assure that the *iwi kuʻpuna* and *moepu* (ancestral remains and funerary items) are properly buried and protected so that the centuries-long process of deterioration and eventual absorption back into the land may take place undisturbed, so that the cycle of life can be renewed’. As Ayau acknowledges his recovery of traditional Hawaiian *indigenous* views on cultural ‘conservation’ processes (the removal of funerary goods from the defilement of public display in museums to be entombed again within the sacred context of a burial cave) may be described as ‘destruction’ by *Western* notions of ‘conservation’ of the material fabric of art and artefacts, but he considers it an obligation to his ancestors to restore funerary items to their original context, and in so doing help to preserve Native Hawaiian cultural values. However, the act of removing the wooden sculptures from the Bishop Museum was not considered desirable by all indigenous Hawaiians, some of whom argued that the preservation of the statues was an opportunity to educate their children about Native Hawaiian culture. While Ayau argues that the only way to revive and maintain Hawaiian culture is to respect the intentions of the ancestors, others see the survival of the ancestral statues within the museum as a potential focus for young Hawaiians to see the achievements of their ancestors and nurture a desire to maintain their culture. A very similar situation is described by Watkins (this volume) with regard to the artefacts recovered from excavations in the Spiro Mounds, Oklahoma, where the Caddo tribe (who would wish to display the artefacts to educate their children) and the Wichita (who would choose to rebury them) have equivalent claims to be the descendents of the people who originally made and buried them.

The complex relationship between conserving artefacts and maintaining culture resonates through Kendall’s article (this volume). Kendall had no doubt that it was more important to bring Native Andean agricultural systems back into active use by rebuilding them, and she was able to persuade the Peruvian National Institute of Culture that it would

be better to reconstruct the Inka canals and terraces rather than preserve the partial archaeological remains. This is combined with an appreciation of the appropriateness of indigenous technology, using local materials and techniques that can be economically maintained by community members willing to contribute their labour. In Andean communities the maintenance of canal systems has traditionally been a major focus for rituals and a reaffirmation of community organizations (Isbell, 1985), and Kendall describes how the archaeological project’s renovation of a disused canal system also provided a renewed focus for social cohesion within the community. However, there is a further issue: the intensified agricultural production results in increased yields, just as it would have done for the Inka, but it is labour intensive and the 21st century economy does not value the produce as highly. Maintaining or reviving indigenous cultural practices may be as important as conserving ancient artefacts, but it is only feasible if it is socially desirable and economically viable for the modern community.

Museums have traditionally been repositories for artefacts removed from their original cultural context. However, more recently museums have emerged as an additional locus for indigenous identity, and their collections and exhibitions can play a very active role in the maintenance or revival of indigenous culture, customs and crafts. Museums that incorporate the intentions behind UNESCO’s Convention for the Safeguarding of the Intangible Cultural Heritage into their function may see a major role for themselves in maintaining skills and design practices for future generations. In this volume Ramos Lopes discusses how the creation of an ethnographic museum in the Amazon became a major focus for the cultural identity and activism of the Ticuna Indians. His account describes how this museum was a powerful source of indigenous pride and affirmative action, but that it was also seen as a threat by settler society at a time when the Ticuna were working to retain and regain some of their landholdings. In this case it was the Brazilian State military that provided essential protection to the Ticuna. The museum also provided a focus for the development of international relations and helped to draw attention to the Ticuna cause. Abungu describes a similar role for museums in Africa, but she highlights that museums will have

to change if they are to support community involvement. Museums have tended to treat their own collections as 'sacred objects', restricting access to the curatorial priests and initiated researchers and excluding visitors from contact with the artefacts through prominent display of the sacred prohibition 'do not touch'. Similarly indigenous beliefs can also impose taboos about who should see or handle particular items held in museum collections (such as some Australian Aboriginal bull roarers). There is obviously a need to be creative in rethinking which restrictions matter and how the display and/or the active use of artefacts can help to retain their cultural significance. For instance, recently the Cambridge Museum of Archaeology and Anthropology accessioned a set of Naga shamanic equipment; however, the ownership of this collection continues to reside with the Naga who can request the return of the equipment when it is needed and who have imposed conditions upon the museum as to which items can be stored or displayed together and which must be kept apart (Anita Herle, personal communication, 1994).

REPRESENTATION OF INDIGENOUS PEOPLES: WHO SPEAKS FOR WHOM?

Indigenous peoples have frequently been delimited, defined and displayed by external authorities, so it is no surprise that indigenous representatives at Suva reacted against further external definitions and stated: 'We assert our inherent right to define who we are. We do not approve of any other definition'. But, such assertive statements, and their use of highly emotive language to make political demands, may be challenged on the grounds that it is frequently unclear as to who has the authority to speak for indigenous groups. Different groups have diverse traditions for selecting leaders and spokespersons. Like internal indigenous legal systems these may not conform to national norms of democratic election. For instance, as Arnold and Yapita (this volume) briefly mention in relation to Bolivian Ayllus, there may be distinct gender structures and a heavy reliance on kinship alliances. Some groups have developed more recent representative organizations in the form of NGOs or cultural associations, whereas others have never

recovered internal structures of governance appropriate to the shifting nature of their populations since the colonial impact and are largely represented by activist individuals or external aid agencies. Arnold and Yapita describe some of the tensions between traditional community elders and political activists of urban groups in Bolivia today.

Hui Mālama I Nā Kūpuna O Hawai'i Nei (Group Caring For the Ancestors of Hawai'i) was formed in December 1988 by Native Hawaiians to protest against the archaeological disinterment of over 1000 burials in preparation for the construction of a Ritz Carlton Hotel. More recently, the Bishop Museum has suggested that it may also request to be recognized as a Native Hawaiian organization pursuant to NAGPRA. The Bishop Museum, founded in 1891 in the name of the Princess Pauahi Bishop, whose collections it contains, has acted as steward of the Native Hawaiian collections and some of its staff (although not the current director) are Native Hawaiians. Ayau has protested at the conflict of interest that will be inherent if a museum that is a repository of Native Hawaiian collections is also the critical monitor of appropriate cultural practice (Ayau, 2004). Who can judge the degree to which either of these organizations are representative of Native Hawaiians, living or dead?

But what of archaeologists and anthropologists, who are sometimes placed in the privileged position of 'experts' on indigenous cultures within court cases? In some cases their professional training gives them an ability to sum up a variety of data and describe patterns in behaviour or material culture in a way that the courts will accept as relevant (Sutton, this volume). But, unless trained in forensic work, few of us would feel prepared to present our academic work in such a context. This has been particularly frustrating for some indigenous groups, which have had to request or pay 'experts' to present their own culture to the courts. Frequently, changes in the law have benefited the experts in providing further work. For instance, NAGPRA resulted in paid employment for archaeologists and curators in registering Native American collections; similarly Tahara (this volume) describes how the Act to promote Ainu culture has created more work for academics. It can be little surprise that indigenous groups have frequently preferred to use moral

pressure or media publicity rather than the much more expensive and time-consuming route of the courts (Ormond-Parker, this volume), such as the Kayapo's successful use of media interest in themselves and their confrontation with miners and loggers to pressurize the Brazilian government and the World Bank to change policies and help to protect a series of reserves totalling roughly the area of Scotland (Turner, 1992).

The public perception of indigenous people has largely been constructed through the writings, drawings, photographs and collections used to create museum displays, films and publications. Today we all 'consume' images of indigenous people through magazines, television programmes, music and the tourist industries. These representations may be produced by indigenous peoples, have the co-operative involvement of indigenous peoples or be produced by external agencies, but whoever produces them there are further issues about who controls the representations, who distributes them and who benefits from them.

Alan Ereira (this volume) discusses the production and editing of his influential film *From the Heart of the World* and his deliberate attempt to be true to the intentions lying behind the Kogi's original request to be filmed by highlighting their isolated status in relation to wider Columbian society and their request to us, 'the younger brother', to respect and protect their cultural traditions, their environment and their isolation. Ereira acknowledges that he sometimes deliberately excluded a few disruptive details (such as a shot of saplings growing in *coca cola* cans (personal comment 2002)) and agreed to Kogi suggestions (such as the use of a newly constructed gate to represent the gulf between 'us' and 'them') to make the film much more true to the Kogi's own vision that the film should be deliberately advocacy. The wide-ranging effects of this film have included the setting up of the Tairona Heritage Trust, which used its resources to help buy-out recent settlers to provide land for the Kogi until such time as the Colombian state also came to support this policy (Ereira). However, since the making of the film the situation in the Sierra has changed fundamentally, with paramilitaries and the army vying for control of the region, although this did not gain international media attention until eight tourists were kidnapped at the end of 2003. The film also contributed to the

public image of indigenous peoples as being respectful of the environment. The image of indigenous peoples as guardians of the environment may have contributed to some of their enhanced political power in recent years (Leclair, this volume), but it is just as dangerous and partial as the previous stereotype of the primitive savage. The archaeological record attests to large-scale processes of deforestation, soil erosion and occasional faunal extinctions brought about by human activities throughout much of the world prior to European colonization (Bahn and Flenley, 1992). Yet many indigenous groups do have a close engagement with their land and are understandably critical of the impact of large-scale agriculture, industrialization, mining, dams and pollution. In some cases indigenous technology and land management was more productive and able to sustain a larger population prior to the impact of colonization and the imposition of European agricultural techniques (Uribe Botero, 2005–07; Kendall, this volume). The question facing archaeologists, museums and the media is how to explore these issues in a nuanced and critical way that includes the presentation of indigenous people's views without constructing false stereotypes – and all within the short space of a newspaper article, a display case or a short documentary. As the Kogi now have access to equipment to make their own films through the 'Indigenous Media Project' it will be instructive to see if they choose to present an idealized vision of traditional Kogi society or if, like films made by other indigenous groups, they focus more strongly on active identity construction and areas where they are in conflict with local and national society (Turner, 1992). The process of creating and disseminating films and other representations is now an active aspect of many indigenous groups contributing to the maintenance and change of society, and Turner (1992: 7) reports that some of the younger Kayapo chiefs gained their chieftainship partly because of the renown and mediating skills they developed as camerapersons.

Public archaeology is primarily concerned with promoting access to sites, artefacts and information about the past. But, when dealing with the past and the present of indigenous peoples, the usual concerns over who decides what to display and who has access to the display become ever more pertinent. Every museum exhibition, whatever its overt subject,

inevitably draws on the cultural assumptions of the people who make it. For this reason more and more exhibitions are being produced in close co-operation with representatives from diverse groups, in order to encourage self-critical internal discourse prior to finalizing the exhibit. The collections within museums are the primary resource and *raison d'être* for most museums, but they are also a problematic inheritance when it was precisely these objects that were used to construct earlier representations of indigenous groups as 'primitive'. For this reason many museums are reconsidering how they use these problematic collections and how their displays will be understood and received by different audiences today. Perhaps one of the most well-known examples of this issue has been the full-sized figures modelled on the bodies of Khoisan living in Cape Town in 1910, that were used in a representation of bushmen around a camp fire at the Cape Town Museum. The museum became increasingly embarrassed by the evolutionary stereotypes that it was displaying, but the popularity and historical significance of the display meant that the figures could not simply be disposed of and needed to be re-contextualized (Lane, 1996; Davison, 2001). The same issue of re-evaluating images that were created at the time of social evolutionary dogma confronts Danie Fiore in her article discussing the photographs and drawings of Indians of Tierra del Fuego, particularly when dealing with the 'then' and 'now' photos of indigenous people apparently persuaded to abandon traditional body paint and masks and don the European-style clothing of 'successful' assimilation. There is a need to consider the original purpose of these images (created by explorers, missionaries and anthropologists) and the degree to which they justified and constructed the image and ideal of the civilized 'white-man' as much as the 'Indian', and Fiore goes on to consider the use of these images in a modern self-critical exhibition. But, there may also be a problem if museums see their role as primarily one of promoting tolerance if this implies 'pacifying activism'. Throughout Africa some culture houses have played an important role in providing a platform for traditional elites to challenge the authority of national politics. This raises further questions about the audience that museums address – can they be relevant to local community and international tourism at the same time, and how should we measure the

success or failure of a museum's activities? (See also Abungu and Ramos Lopes, this volume.)

DEBATE OR DISPUTE?

While writing this introductory article, I have been very conscious of the curious responsibilities of the editors of an academic journal when discussing issues of such emotional and political strength. It is surely the purpose of academia not simply to pander to the norms, prejudices or stereotypes on a given subject, but to seek out the contradictions, problems and pitfalls of current practice. As Leclair discusses, we should be aware when legal decisions and sensitivity over indigenous politics are restricting justifiable debate. As discussed in this article, indigenous demands are a major challenge to many of the most fundamental assumptions and practices of archaeology and heritage management. But, while I am keen to develop an informed discussion, I do not think it should be our role to create contestation through our own polemic. As is probably clear from this text, I am broadly sympathetic to many of the concerns of indigenous peoples and appreciative of the difficulties inherited from past conflict as well as current issues. Yet, at the beginning of the 21st century it is rarely clear how the return of indigenous peoples' rights can best be achieved, as even in relation to specific situations it is difficult to identify to whom such rights would now apply, or the impact returning such rights will have on others. What is clear is that archaeological remains and the rich heritage of indigenous peoples will remain at the centre of these debates. I hope that the papers in this volume will contribute to the increasing awareness within the archaeological community that these are issues that affect our practice and require our consideration.

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