Introduction and Some History

Thanks Lindsay Weiss and to Lynn Meskell for the invitation to visit. I took Lindsay at her word when she suggested that a grand-scale view of my research and my directions of critical inquiry would be welcome today. The invitation comes at a good time as I try to weave some interrelated studies into a book length manuscript.

This project has been evolving over a long period of time. As some of you know, my earlier work addressed intellectual property and its impact on cultural life in consumer societies, a study in meaning and power that considered the generative force of law, making contributions to scholarship in law in society, cultural studies, and legal and cultural anthropology.

In 1998, as that book was being released, I received a phone call that began, for better or worse, a new study, although I certainly didn’t intend it to do so at the time. The call came, of all places, from an official in the Canadian Ministry of Industry in its Intellectual Property Policy Directorate. Tasked with representing the Canadian government on the intellectual property aspects of the Convention on Biological Diversity, the Ministry was seeking someone who could provide a research report on the legal status of a particular provision of the Convention, namely that pertaining to the protection of traditional knowledge. Was the protection of traditional knowledge (in Canada largely considered to be an issue involving indigenous communities) better considered an intellectual property right or a human right, they asked? As an anthropologist and an intellectual property scholar they assumed that I would at least have some familiarity with at least two of these fields, and they admitted that finding anyone with expertise in both of these and international environmental and human rights law was proving to be too great a challenge. It was a challenge and despite having little to no knowledge of either, I took up the assignment in what can only be called a research blitz, reading 400 articles and producing a report in less than 60 days and in the course of it, opening up my eyes to several new worlds of power, policy, discourse and legal productions of subjectivity.

It was surprising to me to learn that intellectual property was a human right, or, to be more precise, one means by which an internationally recognized cultural right could be recognized and protected. More surprising still was the realization that although some jurisdictions recognized property as a human right, many did not, and intellectual property was seldom within the property rights recognized as human rights. Moreover, the status of indigenous peoples in international law was evolving, and the Draft Declaration on Indigenous Rights was increasingly cited, although few at the time felt that it was likely to achieve sufficient political support to be ratified as an international instrument. The World Intellectual Property Organization was taking up the issue of traditional knowledge (as well as traditional cultural expressions and genetic resources, both of which implicate indigenous interests) through a series of fact
finding missions, and holding meetings to which indigenous representatives were invited, if insufficiently supported. It was an opportune time, then to explore an unfolding set of processes in which an indigenous subject position was being forged in proximity to the emergence of new issues in intellectual property which called into question the law’s universality and tied IP issues to environmental and heritage politics. My ‘fieldwork’ involved participant observation at a number of different scales, often working closely with the indigenous working groups in both CBD and WIPO arenas.

As a Canada Research Chair (CRC) appointed in 2001, I was expected to do more international and collaborative research, to work with other research chairs and to make concrete contributions to communities outside of the academy. These expectations were fortunately and serendipitously accompanied by a series of invitations to join forces with team projects exploring indigenous heritage issues which was my first sustained relationship with archaeologists and their concerns. From 2004-7 I was part of a research group exploring ethics of appropriation based at the University of Victoria, from 2006-9 I was part of a team that considered the legal and political implications of heritage concerns voiced by First Nations community-directed reports, from 2008-2015 I became involved in an international group based at Simon Fraser University concerned with Intellectual Property issues in Cultural Heritage which privileged indigenous community projects, and in 2010-2012, part of a team centred in Switzerland on indigenous cultural heritage and international trade, where I considered the new UNESCO Convention on Intangible Cultural Heritage and its implications for indigenous peoples and postcolonial cultural politics more generally.

In all of these projects I have faced the difficulty of moving beyond the legal expository and policy-oriented work that grant funders and the CRC program expect as ‘deliverables’ into more theoretical terrain, and, importantly, to do so in ways that consider to be sensitive to local needs and political aspirations. Moreover, it soon became obvious that the stern mandates of my graduate education, in which one was expected to move beyond culture, to avoid any use of it as a noun – which was held to indicate a politically naïve if not regressive or conservative impulse – simply wasn’t adequate to, or seemed somewhat naïve in face of unfolding politics which clearly involved a redeployment of culture in rights terrain that couldn’t be judged so simply. Despite years of anthropological uneasiness with the possessive relationship to culture, it seemed to me that we could no longer ignore the political work that the culturalisation of claims was accomplishing, nor should we allow our intellectual prejudices to prejudge these political projects.

The ‘Work’ of Culture in an Era of Informational Capital

Generally, I am engaged in writing and rewriting a group of interlinked studies exploring new intersections between culture and the proprietary imagination (not ‘property’; I want to distance myself somewhat from its dominant meanings under neoliberalism and attend to the larger field of possibilities in its histories—judicial and otherwise). I would rather say that I am engaged in “a multi-sited ethnography of the political economy of cultural rights” (but once again I find myself up against many presuppositions to even begin a conversation). Here, in any case, is how I explained my project to a funding body:

The Project seeks to explore and explain the growing proliferation of cultural rights under conditions of neoliberalism by considering the political influence of new international legal instruments and their implementation, while conceptually mapping the activities of emerging social movements manifest in transnational NGO networks and their encouragement of community self-understandings in island Southeast Asia, and Andean and Amazonian South America. It will delineate the sources of possessive claims to
As anthropologists continue to document, emerging social justice struggles increasingly make assertions on cultural grounds, possessive claims to culture are proliferating, and cultural traditions provide the basis for new forms of political and social initiative, industry and investment around the world. Cultural rights claims are unquestionably tied to changing patterns of global accumulation and, less obviously perhaps, to the increasing dominance of informational capital. Culture has acquired a new value in rural, sustainable, and rights-based development projects and consumption practices. New forms of ethno-development, including cultural tourism and the cultivation of culturally distinctive export goods, are encouraged to foster rural economic revitalization and secure sustainable livelihoods. Such phenomena need to be understood in legal as well as political economic context.

Cultural rights are perhaps the least known of the categories of human rights, but they are increasingly significant in the assertion of social justice claims. Although interdisciplinary scholarship on international human rights is burgeoning, the field of cultural rights is still remarkably overlooked. I always need to remember when speaking to American audiences that international cultural rights are even more invisible here because of the failure of the US to ratify the Covenant on Social, Cultural and Economic Rights (meaning that half of the field of international human rights are here understood largely metaphorically rather than as terrains of interpretation, implementation, and articulation). The refusal of the US to engage with UNESCO over most of the last few decades has also precluded the language of cultural rights from becoming part of American political discourse. Cultural rights in international law include intellectual property right, rights to participate in cultural life, rights to benefit from the arts and scientific achievement, to maintain and to develop cultural traditions and rights to international cooperation. These are augmented by the cultural heritage provisions of the Declaration of the Rights of Indigenous Peoples. More recent UNESCO Conventions have put new emphasis upon intangible cultural heritage, cultural diversity, and intercultural dialogue even if they don’t provide rights as such but rather principles for interpretation that might at some point be considered part of international customary law.

So I seek to explore the concept of culture as it is articulated in rights discourses and understood in rights practices with particular emphasis upon assertions and possessive claims made by and on behalf of social collectivities on cultural grounds. I am not interested, however, in producing yet another philosophical study seeking to justify or limit such rights, criticize projects of multiculturalism, or debate new versions of cosmopolitanism. Rather, I seek to further a comparative “critical cultural legal studies” exploring the conditions under which cultural rights are asserted as well as the political prospects and limits faced by communities who come to frame their needs, demands, and aspirations culturally.

This is necessarily an interdisciplinary inquiry. It relies heavily upon work done in anthropology and geography concerned with the development of culture as a resource in the Global South. Anthropologists and political geographers are increasingly addressing questions about conditions of emergence for cultural identity in specific ethnographic studies, but few of them show any familiarity with the international legal frameworks that shape state, development aid and NGO activities in the regions where they conduct their research. Moreover, there is little scholarship that explores the relationship of cultural claims to rights discourses or situates these in the changing regional political economies from which they emerge or the changing legal climate in which new pressures are put upon
states to recognize minorities, identify their heritage, and locate and capitalize upon cultural expressions and distinctions.

Provisions of international legal instruments increasingly provide authoritative discursive frames for the transnational activities of governments, NGOs, and indigenous peoples whose activities traverse local, regional, national and international scales of activity. I will spare you a list of instruments that require forms of ‘implementation’ -- examples of ‘global’ policy-making that are reshaping ‘local’ social relations while linking places into transnational networks of activity. We consider the agency of NGOs as well as indigenist movements in the evocation of specific cultural rights and the effects of networked NGOs in spreading particular international legal rhetoric and policy discourse between regions. To paraphrase Anna Tsing (2007):

“…words and worlds put into motion in cosmopolitan encounters at multiple scales of power and governance” – how concepts emerging in one policy arena migrate to another and do new political work (and through what agencies).

Ethnographic research shows that NGOs clearly play an important role in reworking local understandings of relations between nature and culture, encouraging communities to express territorial and resource relationships in cultural and proprietary terms, providing new frames of reference for assertions of identity while they engage in ‘capacity-building’ at the grassroots level. NGOs that seek to “empower” local communities may reify traditions as sources of “social capital” and encourage peoples to adopt an entrepreneurial attitude towards the social relations of reproduction that have traditionally sustained them.

This project thus involves what Sally Merry (2006) calls “mapping the middle” between international legal frameworks and local cultural practices. It contributes to a growing field of transnational cultural studies that uses multi-sited ethnography by focusing on specific discursive forms as they move across, among, between and through institutions, categories of social actors, networks and communities reconstituting political representations, imaginaries and aspirations as they do so.

The Work of Rights at Governmentality’s Limit (s)

Foucaultian theories of governmentality suggest that the new emphasis on cultural community in neoliberalism accomplishes a distinctive form of subjectification. Anthropologists show significant correlations between neoliberalism and the growth of ethnic and indigenous identifications—some of which appear to line up with NGO interventions and investments. Practices of government, however, rarely produce subject-effects as coherently as the Foucaultian model suggests. Thus, I consider the extent to which human indigenous rights discourse shapes the local and indigenous movement responses to these policies, providing alternative normative resources for a counter-narrative of culture as a source of moral economy, social meaning and value to ground political appeal for “land, culture and a dignified livelihood.”

Several years ago I published a commentary on Tania Murray Li’s work on governmentality and its limits in the journal *Anthropologica*; we both agreed that “the space of the limit” was a productive place for ethnographic work—exploring the “particularities of conjunctures” where neoliberalism comes up against histories, solidarities, and attachments that may not yield easily to its projects (2007). The idea of the limit, or limits, suggests a boundary, but it also marks the achievement of a point of exhaustion, the beginning of an ongoing lack of capacity, and a point of refusal. Governmentality has its limits, but so do people and people’s limits are not wholly governmentality’s own. Consideration of
governmentality’s limits may both invite the subaltern to speak and urge us to attend to the conditions under which those voices are heard and the tactics characteristic of the politics of the governed. Ethnographic exploration of governmentality’s limits thus requires an understanding of the cultural resources and political tactics available to social agents in practices of articulation.

We now have many excellent ethnographic portraits of instances in which ‘indigenous’ identities were and were not successfully articulated, exploring the various practical and political factors at work in making such claims compelling and/or persuasive. The exploration of such conjunctures, however, also needs to attend to the diversity of scales at which such identity claims are made and the forms of political scrutiny and persuasion they enable. This is not, emphatically, to seek a field of ‘resistance’ to a field of ‘power’ but to consider how different forms of struggle take up resources afforded by different regimes and discourses of power and the characteristic subject positions they offer, the new forms of “empowerment” and “responsibility” they enable. For example, I would point to Molly Doane’s work on “the political ecology of the noble savage” (2007).

I have suggested that the deployment of available discursive resources such as local understandings of tradition, moral economies of customary practice, and specific beliefs about the nature of human dignity are crucial to articulate situated senses of injustice and convictions about governmentality’s appropriate limits and to express alternative forms of political aspiration. Specifically the vocabulary of right and practices of rights claims continue to afford new resources and opportunities for articulations at and of governmentality’s limits, moving beyond issues of universalism and relativism to understand rights as ever-emergent articulations in which locally significant as well as transnationally validated cultural resources are used to interpret putatively universal entitlements so as to expand the scope of what justice entails and injustice demands (although the scholarship on heritage and human rights appears not as yet to have developed these insights, it is a promising avenue of essential research).

The anthropological study of human rights is still in its infancy. It has had little engagement with the concerns of political anthropology generally, and less still with questions of governmentality. Human rights have international, state, regional, and local provenance. Enunciated in performative iterations at multiple scales, their normative content is continually reinterpreted to express new forms of grievance, aspiration, and entitlement. They may be called upon in movements of self-determination that demand greater autonomy from the modern state and they may be deployed to subject the state itself to new forms of scrutiny, judgment, and discipline. Rights vocabularies are spread transnationally by so-called non-governmental organizations, development institutions, social movements, and activists representing diverse minorities and global causes – interpreted across rhizomatic transnational networks. They afford forms of identity and means of identification, invite new forms of coalition building, and may provide vehicles to express alternative forms of development and visions of human improvement at odd with international institutions and developmental states.

Rights are always dialogically engaged with residual, dominant, and emergent fields of power. New programs of government provide the opportunities to assert new kinds of right; given its emphasis upon autonomy and responsibility, neoliberalism, for example, functions through new forms of empowerment and freedom. These spaces of autonomy, however, may also enable older forms of attachment and obligation to assume a new legitimacy when linked to universalizing discourses of morality. This would accord with Foucault’s insight that appeals to new rights or new forms of right will always rely upon concepts derived from existing discourses of moral or political right and;
Rights practices engage “one of the few moral injunctions the legitimacy of which is still acknowledged internationally” (Hristov 2005: 89), to justify practices of ‘everyday resistance or outright refusal’. They are used to target state governments, international economic institutions, and transnational corporations (and to a lesser degree NGOs and communities) as subjects bearing obligations that must be continually reinterpreted and reiterated. Our ethnographic explorations need to remain attentive to the productive capacities of regimes of power and the distinct forms of subjectivity they provide as well as the capacities afforded for people thus subjected to engage available resources from multiple traditions to enable new articulations of right at governmentality’s limits.

Let me get more specific. I want to shift gears here; I do so with some trepidation, and I hope I can do so without being accused of cynicism (as I was recently), which in fact I don’t feel. Rather, my attitude toward socially constructivism is animated more by a politics of hope (in David Harvey’s sense) and the STS belief that “the socially constructed naturalized fact is a critical rendering of matters of wide concern” (Latour).

“Vital Worlds...Life on the Line”...

... is the slogan featured on the bag given to all those attending the Convention of Biological Diversity Access and Benefit Sharing meetings at The Hague in 2002. This breathless evocation of vitality and its pending loss animates the international legal instruments that give rise to the political effects I have been exploring at multiple scales. All of them bear a clear relationship to new forms of informational capital and constitute new zones of conflict for neoliberal capital accumulation (in the form of intellectual property). The CBD is preoccupied with life’s variety and the need to preserve it. Like other neoliberal legal instruments preoccupied with diversity, its functionaries struggle to persuade and cajole state commitments to construction of governance structures and to attract capital investments maintenance and preservation measures. Less obviously perhaps, it also attracts the productive energies of multiple agencies that seek to maintain forces of animation in the face of such deadly structurations.

One way of reading my project is as a map of a small area of the new configuration of the political imaginary that Marc Abeles (2010) described as “a new governmentality that has taken charge of the preoccupations that concern questions of survival” exploring some of these new institutions of governmentality, their technologies and agencies, generative contradictions and productive energies. Characterized by new transnational forums, perceptions of environmental and cultural risks are yolked to forms of perceived social insecurity to enable NGOs as well as new social movements to claim new rights and responsibilities, through processes of deterritorialization that give rise to distinctive reterritorializations.

Proponents of these regimes share a rhetoric animated by convictions of pending ‘loss’ to marshall international, state, civil society, and community investments in preservation, conservation and “the safeguarding” of threatened distinctions. Such distinctions must be located, inventoried, and otherwise rendered sufficiently stable to be measured and evaluated in terms (either of their ability to represent the (threatened) capacity for human difference or the immediacy of their potential extinction). Simultaneously, however, anthropologists, botanists, farmers, creative practitioners of various stripes, indigenist rights advocates, and newly empowered communities—express the fear that such activities of
documentation, inscription, and fixation may artificially ‘freeze’ these genetic resources, traditional knowledges, or cultural practices (in seed banks, data bases or museified contexts to provide just a few examples). To keep such distinctions lively, new forms of revitalization must be continually imagined and put into place, which promise new forms of empowerment—giving birth to new hybrid actants, committed to maintaining their vitality. In this way, strategic deployments of both finality and hope inform contemporary politics animating new social formations.

A particular imaginary of globalization rhetorically drives this new form of global governmentality; the distinctions and differences it seeks to protect, maintain or preserve are seen as extremely vulnerable—to forces of urbanization, modernization, migration—global flows which are deemed to ‘homogenize’ worlds of organic variability. Let us briefly traverse this terrain at another scale.

**Safeguarding the Intangible Cultural Heritage**

Vladimar Hafstein explores what he call the ‘performative’ power of the category of intangible cultural heritage to mobilize people and resources while transforming practice in the name of its preservation. Examining the history of the emergence of the term at UNESCO, he shows how this policy object is animated by grave threats of deterioration, disappearance and destruction; “the alarm of the 11th hour drives patrimonial conscience” (Hafstein 2007: 80). Some excellent new work in European ethnology explores these processes of UN listing and means through which heritage is deemed simultaneously distinctive, representative of human diversity, and/or endangered, and the political transformations thereby wrought through the institutional governmentality incited by UNESCO nominations practice. The propensity of such emphases on patrimony to turn backwardness into authenticity, and thus to artificially freeze local social life has been much remarked upon, as has the way in which cultural practices, spaces and activities become ‘resources’ (economically and politically) by multilateral institutions that serve to administer populations. As governments are encouraged to view culture as a form of capital, they seem compelled to conceive of it in proprietary terms and to concern themselves with its theft, leading to state attempts to protect more and more forms of vernacular culture as a new form of intellectual property.

Far less emphasis, however, has been placed on efforts, from within the belly of the beast, no less, to prevent this from occuring. Critical anthropologists are far from unknown to UNESCO policymakers. An overview of the development of policy in the institution quite clearly reveals the work of anthropologists in warning policy makers against ‘freezing culture’ or ‘museifying’ local cultural life. UNESCO for instance has created operational guidelines that insist on the involvement of ‘communities’ in decisionmaking, that enhance livelihoods and keep local cultural practices alive—dynamic, evolving, and changing to provide new opportunities for self-directed and sustainable development.

*Sustainable development* is a hybridized concept that has become so naturalized that we rarely reflect upon its inner tensions. To ‘avoid the worst’ inclinations of those who seek to ‘avoid the worst’ declines in diversity, sustainable development requires ever new measures to sustain itself. New technologies such as rights-based indicators need to be developed that ensure that local values are respected, equity concerns are addressed, and the necessary scope and range of community participation incited, giving birth to new forms of expertise in maintaining local vitalities. ‘Safeguarding’ the intangible cultural heritage as a field of living cultural variability will require both governesses and guardians.

The history of the emergence of this regime is quite remarkable, as is what its proponents seek to accomplish, however fraught I anticipate this process will be. Anthropologists have sounded some
cautionary notes about this process although they have been less vocal in echoing any hopeful murmurs… from the locations in which states implement and apply what must be a “bottom up” approach that is “community driven,” in which “heritage should pay its own way”! The ironies and oxymorons here are rife for ethnographic exploration.

As sociologist Antonio Arantes notes, UNESCO activities have encouraged emphasis upon ‘traditional know-how and forms of expression…as effective cornerstones for the implementation and promotion of humanitarian as well as social and economic development programs in the poorer regions of the globe’ and ‘it is becoming part of the common sense among policy makers that the protection and enhancement of heritage can contribute to social and economic development’.

Once distinctive cultural heritage is identified with specific social groups as a target of preservation of safeguarding efforts, it tends to become a resource for the production of consumer goods and services that circulate in wider economic circuits that may impose upon local communities [new] demands often set by external markets … New demands tend to be brokered by outside agents, and there is always a danger of local communities losing control of the process and having their work processes transformed in ways that are alienating and break down community social bonds. The desire to maximize returns has inevitable led to questions of collective intellectual property, an issue that continues to vex WIPO . . . (Coombe and Turcotte, forthcoming; internal citations omitted).

Thus, for example, farming communities may be encouraged to designate traditional foods that might be marketed without negatively affecting agricultural practice (another area in which collective intellectual property vehicles, in this case geographical indicators, are proliferating, cf: Coombe & Aylwin 2012, Aylwin & Coombe 2013). Communities may need to find ways for traditional custodians to transmit landscape values to youth while providing viable employment for them in activities such as cultural mapping, while using such maps to design activities for visitors, ascertain what practices of ‘reproduction’ (photography, video, audio, etc) are appropriate and under what conditions.

**The De-Fetishized Commodity?**

As Regina Bendix (2010) suggests, the process of ‘heritagisation’ involves the strategic invocation of tradition and authenticity, the projection of identity and the cultivation of symbolic capital, the contestation of heritage values, and the symbolic work that goes into their marketing. Inevitable, the intangibility of that which is ennobled as ICH will require new mechanisms to make it tangible in some way in order to ensure profit from this new status or to prevent misrepresentations and unfair competition. Seeking means to ensure that tourism benefits are reinvested in local communities, promoting local products that reflect local values, and seeking new governance structures for provision of transport, accommodation, and touring that provide income and build capacity are all areas of ongoing research. It is now acknowledged that “generating income in ways that do not conflict with heritage conservation and are culturally sensitive is a management challenge” (Lennon 2003: 123). The emergence of new management expertise will no doubt follow.

As communities seek to maintain profits from heritage goods against competition, they may well consider forms of intellectual property as means to do so. Nonetheless, we would argue that certain kinds of intellectual property lend themselves to the goals of safeguarding ICH better than others. Marks indicating conditions of origin, such as certification and collective marks as well as geographical indications, appear to be especially suitable for the marketing of goods based upon traditional knowledge and ICH. Because they can be collectively held and managed, mark places of origin and the
reputation of particular localities, may be used to reflect local cultural values and are in significant ways inalienable, they are amenable for use to advance the community development and empowerment envisioned by UNESCO and desired by many communities—cultural landscapes, for example. In a paper I published with Nicole Aylwin in Environmental Planning A (2011), we explore new ways of animating commodities that put producers’ desires, energies and values into products that circulate in markets as communicative goods. Although there are plenty of horror stories that remind us how cynically and opportunistically such legal vehicles may be harnessed, we argue that collective and certification marks have also become means by which communities communicate, use a market-based vehicle to avoid unwanted forms of commodification, while meeting demands to designate community cultural heritage under neoliberal pressures. In a separate forthcoming paper we explore rights-based development indicators as one ambiguous means by which the limits of this neoliberal strategy is met an marked.

Nonetheless, there are real limits on UNESCO’s capacities to steward the livelihood values it champions, particularly amongst indigenous peoples and communities. Indigenous peoples themselves remain unconvinced that an international treaty produced without their input reflects their values, and to the extent that local cultural values are determinative in evaluating the significance of ICH, and such significance is the criteria for international recognition, UNESCO may find itself at an impasse with respect to indigenous intangible cultural heritage. This impasse may only be overcome if indigenous peoples are politically acknowledged as the primary actors with whom UNESCO must negotiate to incorporate intangible ICH into the intangible cultural heritage internationally recognised as in need of safeguarding, which seems unlikely except in those rare instances where indigenous peoples have considerable power vis-à-vis state governments (as, for example, they increasingly do in South America). Whether or not indigenous peoples wish to have their ICH so acknowledged is another discrete and distinct question, the answer to which will lie in the particular circumstances in which any given indigenous people or community finds itself in relationship to the state in which they are resident, their need for NGO and UNESCO assistance, and the political value of the international publicity that recognition of their ICH might afford (all from Coombe and Turcotte, forthcoming).

State-based systems of assistance for trade in indigenous heritage goods (including MICOs) pose particular dilemmas because of the likelihood that they will be based upon historical forms of governance over indigenous peoples and perpetuate state based identifications of indigenous peoples and their cultures that have been experienced as colonial forms of discipline and power. For example, New Zealand attempted to create a system whereby the designation of ‘traditional Māori weaver’ could be applied for to certify a craftperson’s goods and to prevent imitations of non-Māori origin from circulating as Māori goods. In conversations with indigenous students, I was told that the endeavour was resisted by Māori who were not willing to have themselves designated either as Māori or as traditional by a state government body that they themselves did not control. Indigenous peoples routinely reject state projects that identify them, ascertain their traditions, decide what is authentic, customary, or traditional to them, and otherwise recognise them according to criteria which are not their own. Any state-based system should avoid violating the human rights principle of indigenous self-identification, which indigenous peoples will inevitable assert.

We must also consider the possibility that states party to the ICHC have interests in safeguarding ICH that are less exalted than serving the interests of humankind and that indigenous resistance to the incorporation of their ICH into such regimes of recognition is less a particular rejection of state involvement in a regime of benign cosmopolitanism, and rather a resistance to the state’s desire to incorporate them into new regimes of neoliberal market governmentality. Anthropologist Philip Scher (2010; forthcoming) reminds us that new forms of state discipline and surveillance accompany a
renewed global emphasis upon heritage and cultural patrimony and that the desire to capitalise upon these values under ‘neoliberal nationalism’ is accompanied by new forms of cultural privatisation. The recent emphasis upon inventorising ICH, reifying it, assigning appropriate caretakers for it, and investing in ‘capacity-building’ to develop local expertise, arguably constitutes a new regime of power which poses both promise and peril for the local communities and indigenous peoples deemed to bear the distinctive culture that these new regimes seek to value. To the extent that those who hold ICH are recognised as such because new markets in informational capital seek to locate those who can contractually negotiate with respect to its use, indigenous peoples have reason to be wary that the esteem in which their culture is suddenly held reflects the fact that it is being targeted in new regimes of capital accumulation that do not necessarily accord with their own values and aspirations.

For instance, we should be wary of responsibilities being vested in ‘communities’ who are not provided with resources with which to meet these new demands, considering that ‘communities’ are often constituted as such by states, who have particular ways of making communities visible and legible that may not necessarily accord with local values or social histories of identification and belonging. The devolution of responsibilities to lower levels of governance may entail greater democratisation, but it is also a way of extending neoliberal systems of government that encumber local peoples or “empower” them only as buyers and sellers and may subject them to new forms of moral opprobrium and blame for situations not of their own making. Conflicts over the appropriate scales for managing both cultural properties and cultural commons are endemic under new conditions of informational capital. We have little sense of whether UNESCO has any independent means or inclination to intervene on behalf of communities if a state party refuses to fully respect the principles of community participation and involvement in safeguarding activities, or does so in ways that indigenous communities find inappropriate. The ICHC may nonetheless achieve greater legitimacy amongst indigenous communities if the concepts and norms of property it validates are those recognised in indigenous customary law; as will any trade-based measures and/or forms of intellectual property.

**Plant Genetic Resources: from Common Heritage of Humankind to Biocultural Heritage? Cosmopolitanism to Cosmovisions**

Here the project is to show how the extension of the heritage concept into the social life of plants has been politically generative. Since the early 1990s, the twinned beliefs that “losing pools of genetic diversity exposes us to peril” (Abdelali-Martin et al 2008) and that “genetic diversity is degrading at an alarming rate” (366), has driven both international policy and diverse political interests. In neoliberal worlds, it becomes important to locate and identify those subjects who maintain such diversity and its vitality, whether as ‘stakeholders’ who must be brought into consensus building or as subjects of contractual relations. Not surprisingly, these agencies are found locally; movements to empower *in situ* custodians of landraces has grown alongside interest in local food security. New coalitions and networks of alliance such as “from seed to table” have emerged alongside new techniques for creating spatial databases, mapping of food resources to arrest degradation of diversity, taking its inventory and mapping local meanings, just as traditional knowledge activists did in the 1990s. Maize diversity, for example, is linked to ethnolinguistic diversity, and the structure of landraces linked to social structure (Brush and Perales 2007: 213, 219-20). I want to acknowledge that the science here is more complex (and contested) than this statement might suggest, as is the concept of structure that is operative here. My main interest, however, lies in how indigenous peoples have found in this nexus of concern with diversity’s precarity new political opportunities to occupy new subject positions and assert new rights claims.
When ecosystems are represented as a “biocultural heritage resources” new ethics of management come into view and new proprietary imaginaries emerge. Some of this is clearly a calculated response to the expansion of intellectual property into the life sciences and genetic futures (Coombe 2003). Biopiracy, whatever its extent, and however one defied it, is understood as a process that undermines the vitality of local livelihoods. Like other forms of perceived dispossession, it has spawned a political response—related to other ‘commons’ movements currently proliferating to address issues of loss, degradation, and sustainability across a number of different fields. Significantly, such ‘commons’ emerge in the face of invasion, dispossession and threat—as peoples see themselves as having common interests in collectively preserving a place, a livelihood, a set of communicative practices—against new forms of encroachment and appropriation.

Certainly not all new ‘commons’ movements share these features, but it is remarkable to me how dominant the trope of responsibility has become, in indigenous and farmers’ rights movements, for example, to dangerously supplant the potentially deadening effect of ‘rights’ if these are reduced to market-based exchange premised upon absolute rights of exclusion. Insisting that diversity is the product of local innovation and creativity rather than an untapped reservoir of natural resources is an ongoing struggle. Ethnobotanists, agricultural economists, anthropologists and farmers movements insist that the so called “common heritage” of plant genetic resources is the cultural work of communities (a practice which is ironically enabled by the rhetoric and tropes of intellectual property). Like “traditional knowledge” and “traditional cultural expressions” (two other areas threatened by intellectual property encroachment) critics insist that we cannot ‘protect’ diversity unless we protect the security of community livelihoods. The relentless expansion of IP over plant varieties, plant germplasm, and thus into seeks and plant reproduction, is understood as a threat to such security. Representing local systems of plant management as a local obligation and a service to a global public has also helped to resurrect the colonial concept of customary rights and given it new vitality (a topic that I cannot do justice to today).

Moreover, growing acceptance (through UNESCO) of the concept of cultural landscapes and legitimation of the indigenous concept of territory (and the latter certainly shaped the former) has encouraged communities to reassert customary law—in some regions this it tied to new assertions of cosmological biosociality in which nonhuman forces have significant agency and surprisingly, new political rights (a genealogy of the term “cosmovision” and its networks of circulation is one project yet to be done).

The politics of ‘stewarding’ local sustenance resources is now a transnational force, activated and energized by digital communications that circulate rhetorical tropes of belonging and obligation which are adopted and adapted by new social movements that link indigenous peoples, farmers, rural development and food-security activists. Ethnographic work in South East Asia, for example, illustrates that in these movements, the very concept of property is transformed to articulate new relationships between knowledge, biodiversity and rights. These are distinctive—rejecting both neoliberal property rights (as exemplified by IPRs in plant genetic resources) and the romantic celebrations of “the common” that characterize the oppositional poles of much critical debate in the industrialised world.

New alliances and coalitions have been built around a postcolonial ethics of stewardship and care that rejects both neoliberal property rights in informational goods and a modern undifferentiated national ‘public’ that disregards distinctive responsibilities. Today, farmers are deliberately engaged in activities that publicly identify, share, discuss, and trade seeds and seed innovations. They create new publics, while making these sufficiently ‘publicly known’ to deliberately prevent patents from issuing on these varieties.
Melissa Wright’s continuing fieldwork with farmer’s rights groups illustrates that grassroots social movements, transnationally linked into international networks, continue to struggle against the privatization of knowledge through IPRs. Instead, she argues that such movements participate in an “epistemological politics” that opposes corporatization of knowledge/property regimes and validates other locally specific ways of knowing. Her work with female farmers in marginalized areas of the Philippines shows how their organizations value local priorities and needs, articulate farmer-centered agriculture at the community level, privilege women’s kinship responsibilities, and struggle against the patenting of plant varieties. It is from farmers’ responsibilities that they insist rights must come; farmers’ claims are based on the groundedness of their work and their duties, their creation and their capacities for sustaining different forms of life (2008: 414).

Farmers’ rights to exchange seed are expressly articulated as human rights, more fundamental than property rights, and linked to reproductive rights—both of plants and of communities—as collective, cultural rights of stewardship. Moreover, they see themselves engaged in solidarity—forging political resources with and for farmers everywhere—with global partners from the Food and Agriculture Organization in Geneva to the global peasants’ movement, Via Campesina and the Third World Network. Significantly, farmers’ rights are now linked to the human right of self-determination as it has been articulated by indigenist social movements.

By Way of a Conclusion

I have drawn a map of the seas I am navigating and perhaps, in the process, convinced you it’s not one you want to swim in without a life jacket, or perhaps you fear I am drowning! There is too much terrain to cover—I started with a project focused on issues of community ethnogenesis, moved it into a framework of neoliberal governmentality and its limits, and have tried to show how new forms of community governmentality in the realm of environmental politics and cultural management are both shaped by market forces and significantly exceed them. In both biological and cultural diversity regimes, new forms of political opportunities as well as new forms of discipline are offered—the logic and rhetoric of IPRs in particular (the powers bestowed upon authorship or cultural inscription) are taken up in new ways by new actors—norms and subjects co-evolve in the face of pending loss. ‘Ecological ethnicities’ were articulated as “communities” were mobilized to claim rights to cultural resources and to claim resource rights on cultural grounds. We know indigenous peoples and other so-called local communities have strategically used their new role in biodiversity politics rights while calling international attention to their dispossession (Escobar 2008, Uloa 2008).

I have moved on from a fascination with “commuity” as an enduring lifeform given new energies by the biopolitics attendant to diversity struggle to consider new elites, new expertise, movements, networks, publics and property forms—in a diversity of vital and hopeful reterritorializations animated by diversity’s impending loss.
References (select few of interest to readers and pertaining to these comments; my working bibliography for the volume is 79 pages)


