

## **Indigenous Intellectual Rights**

Spring 2003

Instructor: Manuela Carneiro da Cunha

Tuesdays 3 – 5.50 pm

Office Hours: Mondays 1.30 to 3.30 (with sign-up sheet) H202

Indigenous movements have achieved a growing political presence, particularly in international fora, with repercussions in national states. The issue of indigenous and local people's intellectual rights, stemming from the 1992 Convention for Biological Diversity, has acquired a major status and is part and parcel of debates at the U.N., at multilateral banks and at the WTO.

Regulating and enforcing such rights brings to the fore a number of difficult issues. How is one to understand traditional knowledge? How is one to recognize intellectual rights in such a manner as not to destroy the very conditions of possibility for the production of traditional knowledge? Who is the subject of such rights and who is a legitimate bestower of informed consent?

The form indigenous rights claims take are not necessarily transparent. Why do intellectual rights claims, for instance, insist on land rights as well? Or what does autonomy, self-determination and other such agendas actually mean at the different levels (international, national and local) and in the different contexts in which they are spelled out? The issue of translation is central to understanding what goes on in the field of indigenous rights.

It has been noted that as culture is an endangered concept in anthropology, it has been seized and nurtured by indigenous political movements. This has to do with the emergence of ethnicity, and with the (false) debate between the authentic and the invented traditions. This is yet another field in which Anthropology has interesting things to say.

Different tasks are expected from undergraduate and graduate students. Undergraduates are expected to take part in one of the 3 working groups in a Melbourne method system that will be fully explained in class. In this system, each group in turn respectively brings up questions related to the readings in writing, responds them in writing and comments on both questions and answers. No final paper will be demanded.

For a pass/fail, attendance, reading and participation in discussion will suffice.

Graduate students will not be required to participate in one of the three Melbourne groups but will be expected to read, attend and participate in the class discussions. They are also to choose one of the following topics for a final paper.

1. Comparison and critique of the notion of indigenous and local knowledge in a (short) historical perspective: research on its emergence, definitions and associations in international and different national legal contexts as well as in anthropology.

Research should be carried in legal literature, NGO and indigenous documents, UN documents (CBD, WIPO, UNESCO, etc.), multilateral Banks.

2. How can benefit-sharing be made to uphold traditional knowledge? Case-studies and analysis of existing arrangements.

3. The issue of Prior Informed Consent in non-centralized ethnic groups. Case-studies.

Week1: April 1

Course presentation. Basic legal background.

Discussion of the San-CSIR-Phytopharma- Pfizer case

Week2: April 8

What is traditional knowledge? What, for that matter, is culture?

Levi-Strauss, Claude 1962 The Savage Mind chapter 1, skip the part on art.

Carneiro da Cunha, Manuela 1995

Week 3: April 15

Defining ethnic identity.

Barth, Fr.1969, Introduction.

Clifford, James 1988 The Predicament of Culture last chapter.

Week 4: April 22

Common heritage, public domain, intellectual rights, intellectual property rights. Pro and con.

Brown 2002, Boyle, Nijar 1996, Descola

Week 5: April 29

On Intellectual Rights as a historical phenomenon.

Mark Rose, Harrison Simon, Lea, Vanessa

Week 6: May 6

Reading Traditional People claims.

Coombe 1998 chapter 5, Strathern 1997 b,

Week 7: May 13

Ethics 101

Discussion of the Yanomami 2001 controversy.

Sahlins 2000, Albert 2001, The New Yorker 2000,

Public Anthropology

Week 8: May 20

Some Issues in Prior Informed Consent. The 'take me to your leader' approach.

Week 9: May 27

Benefit-sharing and its traps. Equity and how not to destroy what you protect.  
Sarah Laird ed.2001, chapters 8,9,11.

Week 10: June 3

On the connection between conservation and indigenous groups. Readings: Brosius 1999,  
Carneiro da Cunha and Almeida 2000, Escobar 1999

**Some Bibliography:**

Albert, Bruce 1997 'Ethnographic Situation' and Ethnic Movements. Notes on  
post-Malinowskian fieldwork. Critique of Anthropology vol.17 n.1: 53-65.

Albert, Bruce 2001 Human Rights and Research Ethics among Indigenous People: Final  
Comments in Public Anthropology. ROUNDTABLE FORUM:  
Ethical Issues Raised by Patrick Tierney's Darkness in El Dorado ROUND THREE

Barth, Fredrick 1969 Ethnic Groups and Boundaries.

Brosius, Peter 1999 Green Dots, Pink Hearts. American Anthropologist vol.101  
n.1

Brown, Michael 1998 Can Culture be Copyrighted? Current Anthropology vol 39  
n.2 : 193-222.

Brown, Michael 2002 WHY HERITAGE PROTECTION LAWS ARE (MOSTLY) A BAD Idea  
*[Presented in the panel "Local Knowledge, Intellectual Property, and Indigenous  
Identity in Amerindian Ethnology." Marcelo Fiorini & Angela Torresan, Organizers.  
Annual Meeting, American Anthropological Association, November 2002.]*

Brush, S.B. 1993 'Indigenous knowledge of biological resources and intellectual  
property rights: the role of anthropology', American Anthropologist 95:  
653-86.

Brush, Stephen and Doreen Stabinski 1996 Valuing Local Knowledge:  
Indigenous peoples and Intellectual property rights. Island Press.

Brysk, Allison 1994 Acting Globally: Indian Rights and International Politics in Latin America. In *Indigenous People and Democracy in Latin America*. D. L. V. Cott, ed. New York: St. Martin's Press.

Carneiro da Cunha, Manuela 1992 "Custom is not a Thing it is a Path. Customary Rights and International Standards. An anthropologist's point of view" in A. An N'aim ed. *Human Rights in Cross-Cultural Perspectives*. Pennsylvania University press.

Carneiro da Cunha 1995 Children, Politics and Culture: the Case of Brazilian Indians' in Sh. Stephens ed. *Children and the Politics of Culture*: 282- 291.

Carneiro da Cunha, Manuela and Mauro Almeida 2000, Indigenous People, Traditional People and Conservation in the Amazon' *Daedalus*, Journal of the American Academy of Arts and Sciences vol.129 n.2: 315-338.

Crucible Group Seeding Solutions vol.2 freely available on [www.cgpri.org](http://www.cgpri.org)

Cleveland, David and Stephen C. Murray 1997 'The World's Crop Genetic Resources and the Rights of Indigenous Farmers with CA comment *Current Anthropology* vol.38 n.4 : 477-516.

Coombe, Rosemary 1998 *The Cultural Life of Intellectual Properties*, chapter 5.

Coombe, Rosemary 1999, *Intellectual Property, Human Rights & Sovereignty: New Dilemmas in International Law Posed by the Recognition of Indigenous Knowledge and the Conservation of Biodiversity* . URL: <http://www.law.indiana.edu/glsj/vol6/no1/coom.html>

Cultural Survival, 2001 *Indigenous Intellectual Rights*.

Dutfield, Graham 2000 *Intellectual Property Rights, Trade and Biodiversity*. IUCN

Ellen, Roy et alii 2000 *Indigenous Environmental Knowledge and its Transformations*. London, Harwood

Escobar, Arturo 1999 *After Nature: Steps to an anti-essentialist Political Ecology* *Current Anthropology* vol. 40 n.1: 1-30.

Fischer, William 1997 *Doing Good? The Politics and Antipolitics of NGO Practices*. *Annual Review of Anthropology* 26: 439-464

Kate, Kerry ten and Sarah Laird 1999 *The Commercial Use of Biodiversity. Access to genetic Resources and Benefit-Sharing*. London, Earthscan Publications.

Keck, Margaret and Kathryn Sikkink 1998 *Activists Beyond Borders*. Cornell University Press.

Lea, Vanessa

- Laird, Sarah ed. 2002 Biodiversity and Traditional Knowledge. Equitable Partnerships in Practice. Earthscan Publications.
- L'evi-Strauss, Claude 1962 The Savage Mind.
- Nijar, Gurdial Singh 1996, In Defence of Local Community Knowledge and Biodiversity. Third World Network Paper 1, 62pp.
- Sahlins, Marshall 1995 How "Natives" Think about Captain Cook for example. Chicago University Press.
- Sillitoe, Paul 1998 The Development of Indigenous Knowledge: a New Applied Anthropology. Current Anthropology vol.39 n.2: 223-252.
- Stephenson, D.J. 1994 'A legal paradigm for protecting traditional knowledge' in T.C. Greaves ed. Intellectual property rights for indigenous peoples: a sourcebook. Oklahoma City: Society for Applied Anthropology.
- Strathern, Marilyn 1996 "Potential Property. Intellectual rights and property in persons" in Social Anthropology vol 4,1: 17-32.
- Strathern, Marilyn 1997 a "What is intellectual property after?" Workshop "Actor Network Theory and After", Keele University, July 1997
- Strathern, Marilyn, 1997b "Multiple perspectives on Intellectual Property" paper presented to the meeting on "Intellectual, biological and cultural property Rights", Port Moresby. August 1997, ms
- Strathern, Marilyn 1999 Property, Substance and Effect. The Athlone Press.
- Turner, Terence 1991, 'Representing, Resisting, Rethinking: Historical Transformations of Kayapó culture and Anthropological Consciousness' in George Stocking ed. Colonial Situations: Essays on the Contextualization of Ethnographic Knowledge: 285-313. Univ. of Wisconsin Press
- Turner, Terence 1998 (draft) 'Anthropological activism, indigenous peoples and globalization'. Paper delivered to the Society for Applied Anthropology. San Juan, Puerto Rico, ms.