Ownership and Appropriation

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Veronica Strang and Mark Busse

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The Honourable Sir Edward Taihakurei Durie BA, LLB, KNZM has a long record in the legal administration of Maori affairs. He was a judge of the Maori Land Court from 1974, having practised as a lawyer specializing in Maori land matters, and was appointed Chief Judge of that Court in 1980. He also established the Waitangi Tribunal, which hears Maori claims against the State especially in relation to historical losses, and chaired the Tribunal for twenty years. He was appointed to the High Court in 1998 and served also as a New Zealand Law Commissioner engaged in law reform. He has maintained a particular interest in the incorporation of Maori custom. He has honorary doctorates from three New Zealand Universities.

Peter Dwyer was appointed as an honorary research associate of the anthropology programme at the University of Melbourne after a long career in zoology. His primary research interests concern questions of socio-ecology and change among societies of the Strickland-Bosavi region of Papua New Guinea. More recently he became involved in the anthropology of communities of commercial fishermen

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Introduction

Ownership and Appropriation

Mark Busse and Veronica Strang

In a world of finite resources, expanding populations, and widening structural inequalities, the ownership of things is increasingly contested. Not only are the commons – such as water and airwaves – being rapidly enclosed and privatized, but there are also growing conflicts over the ownership of ideas, culture, 'heritage', people and even parts of people. Understanding how human groups understand and decide ownership is therefore both central to anthropological debates and of enormous practical consequence. In 2008 a joint international conference in Auckland brought together the anthropology associations of the UK and the Commonwealth, New Zealand and Australia to consider the theme of 'Ownership and Appropriation'. The goal of the conference was to extend the area of anthropological theorizing which had been dominated by the term *property* by shifting the focus from property and property relations to notions and acts of owning and appropriating which precede, underwrite and inform property relations. This volume presents some of the ideas that emerged from that event.

Anthropology and Property: A Brief Historical Overview

Chris Hann (1998, 2005, 2007) and Caroline Humphrey and Katherine Verdery (2004) have recently traced anthropology's long interest in property, which stretches back at least to Lewis Henry Morgan and Marcel Mauss. Morgan associated the development of ideas of property with social evolution, suggesting that 'dominance [of property] as a passion over all other passions marks the commencement of civilization' (Morgan 1974:6). Hann (2005:112; 2007:291) cogently observes that Mauss's study of *The Gift* (1990 [1925]), in its examination of changes in how people relate to one another via things, can be read as a history of changing ideas of property. In the 1930s Bronislaw Malinowski (1935) and Raymond Firth (1939) provided early treatments of individual and communal ownership, while three decades later Max Gluckman (1965) demonstrated the close relationship between Barotse land ownership and social structure.

The sixth edition of *Notes and Queries on Anthropology*, originally published in 1951, includes elements which have gained new relevance in contemporary anthropological discussions of property and ownership, including the essays in this volume. It begins with the observation that: 'The concepts of property and ownership are closely linked. Ownership is best defined as the sum total of rights which various persons or groups of persons have over things; the things thus owned are property' (1967:148–9). Definitions of ownership in terms of rights continue (e.g. Hann 2005:111–12; 2007:291) despite critiques of the sometimes ethnocentric assumptions that the language of rights makes about what constitutes a person (Humphrey and Verdery 2004:6). Most contemporary anthropologists and legal scholars, however, define property as a social relationship between persons with respect to things, which includes, for example, rights to exclude others (Macpherson 1978:3–5; Hann 1998:4–5, 2005:111; Humphrey and Verdery 2004:5).

Notes and Queries goes on to state that ideas about property vary both cross-culturally and within single societies 'according to the nature of the property and the type of ownership right involved'.[1] Anthropology has played, and continues to play, a critical role in relativizing property, in documenting cross-cultural variations both in persons and things, and in relationships between persons and between persons and things. It has also demonstrated the ways in which the materiality (or immateriality) of objects of ownership affects the character of relations between people with respect to them, a point taken up in detail in this volume by Veronica Strang, Monica Minnegal and Peter Dwyer, and Michael Wilmore and Pawan Upreti.

The last twenty years has seen renewed anthropological interest in property, coinciding with the rise of neoliberal ideology and its emphasis on free markets and private property, and the collapse of socialism in Eastern Europe and the former Soviet Union. The latter event led to a scramble for previously state-owned resources, a process that has been extensively documented by anthropologists (Cartwright 2001; Eidson 2006; Hann 2006, 2007; Humphrey 2002; Verdery 2003).

Over the last decade, theoretical writing by Hann (1998), Strathern (1999), and Humphrey and Verdery (2004), among others, has demonstrated the relevance of anthropology to articulating the complexity of property relations. Anthropology has also made significant contributions to global debates about intellectual, biological and cultural property (Brown 1998, 2003; Coombe 1998; Geismar 2005, 2008; Hirsch and Strathern 2004; Kalinoe and Leach 2004; Posey 2004; Ziff and Rao 1997). These include examinations of the role of creativity in the construction of intellectual property (Leach 2004; Moutu 2009), and the movement of intellectual property out of national and international legal realms and into local and everyday discourses (Geismar 2005; Strathern and Hirsch

2004; Van Meijl 2009). They have also exposed the reification of intellectual and cultural property: for example, the reification of culture in cases of claims over 'expressions of culture', and the reifications of peoples as new 'interest groups' emerge through processes of claiming (Strathern and Hirsch 2004:8; cf. Busse 2009; Coombe, this volume; Recht 2009).

The Dynamics of Owning

In her essay 'Possession as the Origin of Property', Carol Rose (1994:11–23) asks how ownership comes about. Some things are owned as a result of exchange or inheritance, but how do never-before-owned things come to be owned? How do new ideas, newly discovered resources, or previously unowned resources such as minerals, water, or radio frequencies, come to belong to particular persons, groups, or corporations? John Locke classically proposed that the owner of a thing is the person who uses her or his labour to modify a previously unowned thing and, in so doing, establishes ownership of it. In the case of land, Locke argued, the labour that justifies ownership is cultivation or development (Garnsey 2007:144; cf. Ryan 1984:14–48). But as Rose notes (1994:12), Locke's theory of ownership raises questions: how much of something can be owned by virtue of labour – for example, why should the cultivation of a piece of land give rights to that land, rather than just to the crops produced?

In contrast, eighteenth-century theorists such as David Hume, Jean-Jacques Rousseau and Immanuel Kant argued that possession or occupation, rather than labour, is the basis of property. As Kant observed, the development of land can only happen if there is prior possession. Hence he objected to the dispossession of indigenous peoples from their land because this ignored their prior possession of it (Garnsey 2007:148; cf. Ryan 1984:81–2). Pierre-Joseph Proudhon echoed Kant's position and wrote, 'To labour it is necessary to occupy' (Proudhon 1970 [1840]:84; Garnsey 2007:146–8, 155–73). Occupation and possession here are examples of social action, an idea further developed by Rose and a significant theme of the papers in this volume.

The ideas of Hume, Rousseau and Kant – and not those of Locke – provide the basis for Anglo-American common law about property which locates the basis of property in possession or occupancy. But, Rose asks, 'what counts as possession?' and 'why does possession count as a claim to title?' (1994:12). At the centre of these two questions lies what Rose terms the 'clear-act principle': to possess something requires both a declaration of an intention to appropriate and an on-going assertion of ownership (1994:13). From this point of view possession is a statement or an act of communication, and it is the labour of communicating claims and maintaining this communication that constitutes the 'labour' justifying