

Misappropriation of Indigenous Knowledge: The Next Wave of Colonisation

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Whenever legal standards are used to implement what are essentially ethical concerns, one can always expect an almost hysteric public reaction. This has been evident in the Abortion/Right to Life Debate, and similarly the issues of Capital Punishment and Sexual Orientation. Misappropriation of tangata whenua (indigenous knowledge) is also a matter of morality. It has been an accepted practice by colonists and their descendants for a long time. In spite of vigorous protests by the world's indigenous peoples, the problem is escalating.

This article will briefly explore examples of misappropriation of indigenous knowledge past and present. I will discuss current global trends in the environmental sciences and medical research, and indicate the direction which indigenous peoples have indicated should be taken in order to minimise the damage to indigenous peoples in what is best described as 'the next wave of colonisation'.

Aotearoa New Zealand as well as the rest of the global community will no doubt face a heated debate as citizens come to realise that misappropriation of indigenous knowledge and resources is as much an issue of national sovereignty as it is about race relations and human rights.

In any discussion on misappropriation and commodification of indigenous knowledge, the western legal invention of cultural and intellectual property rights (CIPR) inevitably comes up. The ability and desirability of CIPR to become the main

mechanism to address and redress matters as comprehensive and interdependent as 'nga taonga tuku iho', the treasures of the ancestors, needs to be thoroughly debated.

As with all issues of morality, one cannot enact legislation to force one individual to respect another. Ultimately, the will of citizens (academics, scientists, artists, musicians, writers to name but a few) as well as politicians and corporations, to act ethically will determine whether the debate will be constructive or destructive.

Ethical Research

It has been commonly accepted practice amongst many research professionals to access traditional indigenous information for thesis, published works and development of government (national and local) policy. Such works have been considered as 'public record'. Whenever the appropriateness of a non-indigenous person recording and interpreting indigenous knowledge has been raised (eg NZ author Michael King) we are usually left with the explanation that if a non-indigenous person didn't record it, it would be 'lost' forever.

That explanation might hold up for the collecting of information, but cannot withstand scrutiny when the eventual work is published as an author's work and the financial proceeds (albeit few) are retained by the author.

It has been argued that even if a non-indigenous author wanted to return the financial profits to the indigenous informants, they wouldn't be able to identify the 'true owners' of the information. However, in the absence of identifying the indigenous 'owners', what right does a non-indigenous person have to assume ownership? In isolation this may not necessarily present a problem, but when one considers that this practice has continued worldwide for many generations, the collective result has

brought devastating consequences to indigenous communities. The Brazilian sociologist Paulo Friere stated in his often-quoted work *Pedagogy of the Oppressed* "as beneficiaries of a situation of oppression, the oppressors cannot perceive that if having is a condition of being, it is a necessary condition for all humanity."¹

A great deal of misinformation about indigenous peoples and their history pre and post colonisation has been promoted worldwide by non-indigenous authors and researchers. As a result, the world has lived a lie. For many governments, this has suited their objective to assimilate or annihilate indigenous peoples within their State. It is only through the global assertion of sovereignty into rangatiratanga rights by indigenous peoples that the rest of the world is able to better understand how naive and ignorant we have all been about the history of others, particularly other indigenous peoples.

Misappropriation of indigenous knowledge in the social sciences has over time certainly contributed to the situation described above, but Social Scientists as a group of professionals have, generally speaking, improved their understanding of ethical research. Many have experienced prolonged and direct challenges by their indigenous 'subjects' and didn't have much choice but to improve!

There is a new team of science professionals however who are embarking on a course well-tramped. Without focusing their urgent attention to developing Research Codes of Ethics their path is bound to lead to conflict. Environmental scientists, medical researchers, and government policy makers in these fields have for the most part been spared from experiencing public accountability. They have been left to their own on the assumption that whatever it is they are doing must be for the public good. It is critical for professionals to develop ethical

research methodology, particularly in light of the inseparability in today's climate of the commercialisation of research outcomes. The user-pays, cost-effective, policy directive has numerous cultural and intellectual property rights issues threaded throughout. Ultimately, the morality of certain research projects needs to be thoroughly considered by those involved. National and international policies should only be used as instruments when all else fails. The onus must be on researchers and government policy makers, in the first instance, to act ethically and morally.

Misappropriation of Biodiversity

The difficulty in negotiating with the afore mentioned professionals as to the level of ethical protocols now required of them is in explaining the inseparability for indigenous peoples of the physical and metaphysical, the tangible and intangible aspects of cultural and intellectual property. A very foreign concept for some. The English vocabulary has many terms to differentiate between the two, but this is not the case in most indigenous languages. The Maori term *Taonga*, for example, relates to both the physical and metaphysical.

Iwi (tribal) customary knowledge forms the major component of what Maori describe as the 'mauri' (life force) of our cultural and intellectual property. Misappropriation of physical indigenous taonga (assets) therefore, is wholly related to misappropriation of indigenous knowledge. Both elements are interdependent and inseparable.

It stands to reason, therefore, that misappropriation of a natural resource prevents the parallel metaphysical resource from being utilised. This is why in defending Iwi claims to the Waitangi Tribunal concerning sacred sites, confiscated lands and polluted waters, to name but a few, Iwi consistently raise the 'mauri factor', which essentially is the metaphysical connection between customary knowledge of environmental and cultural well-being with a physical tangible resource.

The Global Environment

The environmental community has come to recognise that 7% of the earth's surface hosts between half and three-quarters of the world's biological

diversity. Virtually none of this botanical treasure resides in either Europe or North America.² In the industrialised world's obsessive drive to develop super-breeds of fruit, vegetables and livestock, substantial habitats of rich biodiversity have been lost. The only sources of replenishment are the lands of developing countries. Biodiversity mining, as it has come to be known, is big business these days. The prospectors are virtually all from industrialised countries. The new mining sites are primarily in developing countries and those peoples most affected tend to be the world's indigenous peoples.

New Zealand is recognised as part of the 'North', an inherently white club with the majority of members demonstrating appalling feats of colonisation. We follow the policies set by 'colleagues'. We make the same mistakes. We see land with scrub (popular name for native bush) and the first thing we do is burn it off so we can raise sheep and cattle. I don't know how many times I have listened

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to people, including the current Minister of Maori Affairs, who are almost incensed that pockets of Maori land are left 'dormant'. They view the land as unproductive and the land-owners as lazy and wasteful. But how much of this nation's biodiversity, particularly indigenous flora and fauna, has been lost because of the push to raise livestock or farm genetically-improved super-crops? The guardianship responsibilities which indigenous peoples universally refer to demand that our environmental management withstands the needs of future generations, a principle from which industrialised countries, including New Zealand, could well benefit.

Biodiversity mining is a billion dollar industry made a lot easier for industrialised countries (the North) by the General Agreement on Trade and Tariffs (GATT)³. In a history-making contract, Merck Pharmaceuticals signed a \$US1 million (over 2 years) deal with Costa Rica for

bio-prospecting rights to one-third of the country's land area. The Canadian-based RAFI (Rural Advancement Foundation International) published in 1993 a Report on Technology Transfer entitled "100+ Examples of the Southern Informal Innovation Systems Contributed to the North's Development". Among the examples are the following:

- New Zealand's modest wheat industry has gained well over \$5 billion in seed from developing countries since the creation of the International Germplasm Board in 1974.
- Plant collector Clive Francis of Australia violated his contract and pocketed lucerne (alfalfa) seed he was sent to study in Libya and, returning to Australia, now claims the seeds are worth millions to Australia's livestock industry.

How does this relate, you might ask, to indigenous peoples? Biodiversity mining is based on the philosophy that the resources of one country can be commercially exploited by another. The GATT makes it legal. In a country such as Aotearoa New Zealand, where ownership and management of our natural resources rests with two Treaty of Waitangi partners, it is morally unacceptable for

the Crown Treaty partner to enter into an international agreement which could allow for our country's natural resources to be commercially exploited by outsiders without consultation with the Iwi Treaty partners. In other countries the morality of commercialisation of natural resources is equally difficult. In all cases, national sovereignty is threatened as well as the rights of indigenous peoples.

The main players in biodiversity mining are multinational pharmaceutical companies who rely a great deal on local indigenous knowledge to identify the plants with healing properties. The motives of such companies are clearly commercial.

We are faced with the same dilemma referred to earlier, that in the absence of being able to ascertain customary 'ownership' of a native plant, what right does the government have to grant patent/plant variety rights to

an international or even national company? What right does the company have to patent? The immorality of the situation is multi-tiered; Governments, Companies, Research Scientists.

Inherent in the GATT Agreement is approval in principle to the patenting of all life forms, a principle directly stated in current NZ legislation (NZ Patents Act). Not surprising therefore is confirmation that patenting has recently extended into human genetic material. RAFI states that the US Government has over 1000 Patent Claims currently being considered of human genetic material.

A US-European Consortium of Scientists has established the Human Genome Diversity Project.⁴ Dubbed 'The Vampire Project' by indigenous peoples, its task is to collect DNA specimens of 700 endangered ethnic (indigenous) communities identified as "Isolates of Historic Interest". The Project has been rigorously criticised and the researchers involved claim that they are using the genetic material to find treatments to cure cancer and AIDS. For the sake of humanity, one might possibly excuse the collection procedure. But how can one explain the Patent Claims?

Initiatives of Indigenous Peoples and the United Nations

Through the annual sessions of the UN Working Group on Indigenous Populations (WGIP)⁵ indigenous peoples have established an international forum for information exchange and discussion of issues of national as well as international concern.

The WGIP forum is tasked with developing a draft Universal Declaration on the Rights of Indigenous Peoples. The current Draft refers to aspects of cultural and intellectual property in 4 of the 31 Articles. Article 29 which has the broader application states:

Indigenous Peoples are entitled to the recognition of the full ownership, control and protection of their cultural and intellectual property. They have the right to special measures to control, develop and protect their sciences,

technologies and cultural manifestations, including human and genetic resources, seeds, medicines, knowledge of the properties of flora and fauna, oral traditions, literatures, designs and visual and performing arts.

Agenda 21 of the 1992 UN Conference on Environment and Development (UNCED), popularly known as the Earth Summit, also makes specific mention of the intellectual property rights of indigenous peoples.

In full partnership with indigenous people and their communities, Governments, and where appropriate, intergovernmental organisations, should aim at fulfilling the following objectives:

Adopt or strengthen appropriate policies and/or legal instruments that will protect indigenous intellectual and cultural property and the right to preserve

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customary and administrative systems and practices. (26.4(b))

In commemoration of the 1993 UN International Year for the World's Indigenous Peoples, the nine Iwi of Mataatua (the Bay of Plenty Region) led by Ngati Awa, convened the world's First International Conference on the Cultural and Intellectual Property Rights of Indigenous Peoples.

Participants came from the Pacific, South America, Europe, Asia and North America. The week-long conference focused on the commodification of indigenous cultural and intellectual property throughout the public and private sectors. An international declaration was subsequently developed and named the *Mataatua Declaration* in honour of the conference hosts.

The *Mataatua Declaration* has moved on to occupy a place in history as one

of the first international indicators identified by indigenous peoples of the ethics and protocols which should be considered by any individual or organisations accessing indigenous cultural and intellectual property.

Where to From Here?

Through the *Mataatua Declaration* and other national and international agreements, there now exists minimum guidelines which researchers and policymakers should observe. Some of these include:

- Developing a Code of Ethics for Collecting and Using Indigenous information.
- Ensuring that the maximum standards of Free and Informed Consent are obtained from indigenous informants.
- Sharing any financial benefits.

Reading the *Mataatua Declaration* is a must for any researcher.⁶ Implementing it is a responsibility of every research project. Ensuring that the Declaration is adhered to should be the responsibility of every government.

Indigenous peoples, for their part, must embark on a separate journey to protect the treasures of their ancestors.

Conclusion

The new wave of colonisation leaves indigenous peoples in a position of enormous vulnerability. International agreements such as the GATT provide international acceptance for the principle of patenting all life forms, human as well as flora and fauna. The basic right of a citizen must surely include the right to exist without being genetically tampered with. We do not know that all citizens face this threat, but we do know that indigenous peoples, through projects such as the Human Genome Diversity Project, do.

It can be referred to as 'tampering', it can also be referred to as 'misappropriation'. Either way it is immoral and brings back painful memories of the attitudes of the first colonists, who regarded indigenous people as savages not deserving of negotiation, consultation or consensus agreement.

What has changed? Is the role of indigenous peoples and their resources, including DNA (whakapapa), simply to improve the livelihoods of colonists?

Researchers must be aware of these issues and ensure that through the development of Research Codes of Ethics they do not contribute further to the problem.

- 1 *Pedagogy of the Oppressed*, Paulo Friere, Penguin Books, 1972
- 2 *Technology Transfer: 100+ Examples of the South's Informal Innovation Systems Contribution to the North's Development*, Rural Advancement Foundation International (RAFI), Ottawa, 1992
- 3 The (Uruguay) Round of the General Agreement on Tariffs and Trade (1948, GATT) was concluded on December 15, 1993. The information released to New Zealanders concerning the pros and cons of the issues agreed to in this round of GATT was minimal and yet the GATT signals substantive changes in the lives of individuals. Copies of the (Uruguay) Round of the agreement can be obtained from the Ministry of External Relations and Trade at the cost of \$15.
- 4 The Human Genome Diversity Project, funded by the US National Institute of Health has identified just over 700 communities for DNA sampling. At least 400 of these communities are indigenous. The 5-year project will cost between \$23-35 million (US) and will allow sampling from 10,000-15,000 human specimens. At an average total cost of US\$2300 per sample, the project will spend more money gathering the blood of indigenous peoples than the per capita GNP of any of the world's poorer 110 countries. (Source: RAFI)
- 5 WGIP has worked since 1985 on the development of a Draft Declaration on the Rights of Indigenous Peoples. It has set a new precedent within the UN for its commitment to consultation with indigenous peoples. Maori have participated in the WGIP Drafting process since 1988.
- 6 More information about the Mataatua Declaration can be obtained from Secretariat, PO Box 76, Whakatane, Fax 07-3070762

Core Services Workshops

As part of the Core Services Committee consultation process Alastair Campbell ran a series of ethics workshops, late last year, with different groups in different parts of the country.

The workshops were aimed at testing the response of people to ethical issues raised in the allocation of health care resources. Rather than forming a group representing the "average" New Zealander the Committee held workshops with seven different groups of people whose views might not otherwise have been heard. These were rural, urban-low income, elderly, youth, disabled, Maori, and Pacific Island.

Alastair Campbell described the facilitation of the workshops as one of the most challenging tasks he has undertaken despite many years of working in higher education and with a wide variety of groups.

"It was impossible to run these workshops without a considerable degree of personal involvement. I myself share the anxiety, which many in New Zealand feel, that previously unchallenged values regarding health care entitlement are under threat from economic forces out of our control. Because of this there was no real distance between me and those who felt and expressed anger at the workshops. I was certainly not a "value free" facilitator.

My ability to communicate as a bioethicist was also under constant, and justified, challenge. I have rarely felt so strongly the unreality of the lecture hall and seminar room. I was meeting groups of very great diversity and for whom abstract philosophical discussions of ethics had, rightly, little appeal. As facilitator I was learning at least as much as I was enabling others to learn "

Each group was presented with three games in which they had to address the most complex question in allocating resources: "Is it fair?". The first concerned the division of a birthday cake at a child's birthday party; the second, Under Siege, the sharing out of food and water among a group of people caught in a war zone when there may or may not be enough to go around; and the third and most difficult, the Lifeboat, the division of food and water among the same group of people as in the second

scenario but this time with the knowledge that they can't all survive.

It was the latter situation which brought out the most creative solutions. Different ways of adding to the scarce resources were explored such as trapping condensation from plastic and catching fish and birds. Ancestral wisdom, prayer and karakia all provided guidance and salvation. The "weakest" member of the group, a frail, elderly woman, turned out to be an expert navigator, provider of fishing line from her hair net and source of wisdom.

Alastair Campbell said what emerged from the workshops was that there is a very high degree of consensus across different age groups, and different social or cultural groups, about the fundamental values that should underlie any definition of core services.

"All workshop groups were deeply suspicious of any suggestion that those who are more "useful" should be favoured and it was striking how, even when the survival of the whole group was under threat, there was a refusal to make judgments of this kind. Two powerful shared values were concern for the vulnerable (young or old), and the desire for co-operation, with each group member having a special contribution to make.

But the question is how, in the realities of scarcity, will we ration? There seems little argument that New Zealanders believe the moral basis for the distribution of health care is the criterion of need. How can we discriminate between needs in a way that is ethically acceptable? To do this we will have to build on the foundation laid in the games where it was accepted that some should limit meeting their needs in order to ensure the welfare or survival of others, and that people should work together to find alternative solutions acceptable to the whole group, when there is simply not enough to go around.

Perhaps this points a way forward for the Core Services Committee in their consultations. Instead of asking only "what do you want or need?", they should devise ways of asking the more advantaged members of our community, "what would you give up in order to ensure a fairer system for all?".

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