

Modes of Creativity and the Register of Ownership

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Introduction

In a recent popular newspaper article, the Director of Papua New Guinea's National cultural Commission wrote of the appropriation of Papua New Guinea's Cultural properties.¹ The Director, Jacob Simet, was trained as an anthropologist. While his article resonates with a popular impetus among activists to make property out of cultural productions, Simet's letter actually points out the myriad difficulties of assigning rights to a nation, a group, or individuals, in the Papua New Guinean (PNG) context.² His stated concern, shared with others, is with those in that country who think they can, "use indigenous people's cultural property whether they are in a position of 'ownership' or not" (Simet 2003). He points out that it is often those within the nation who disregard the restrictions their fellow citizens may place upon their cultural productions.³ Simet's piece simultaneously illustrates the tendency to seek protection from property regimes, and the complications involved for indigenous peoples in doing so. Even if the issue were merely that of applying Intellectual Property (IP) as it stands to cultural and biological knowledge, the individual/communal divide is an inadequate mechanism through which to do so. The kinds of complex collectivities responsible for the creation of value that are apparent in Papua New Guinea, and as this book demonstrates, elsewhere, cross-cut some of the core logics of Intellectual Property. Collaborative, or distributed forms of creativity do not sit easily alongside the appropriative and individualistic terms it enshrines.

Another Papua New Guinean colleague recently reported a growing concern among craftspeople, and others, in the capital city of that country (Port Moresby). People there fear that the recent introduction of law governing copyright will have the unintended consequence of establishing a new significance for (and bounded-ness to) ethnic identity.⁴ Craft producers have regularly borrowed styles of carving, or of looping string bags, for example, from other parts of the country. Thus women from the Highlands area loop string bags in the style used by women from the Sepik River on the North Coast, or male Sepik carvers copy the style of storyboard associated with people from the Gulf area on the Southern Coast. It is quite usual to see such items for sale in the city's markets and tourist areas. And indeed, as others have pointed out (Araho 2000), such borrowings and adoptions have been central to the diversity and creativity of indigenous cultures in the region: borrowing did not begin with tourist art.

What would the act of copyrighting do in such a situation? And if such "styles" could be owned, then what would the "owner" look like? The fear is that the owner would be a kind of collectivity based upon an ethnic or tribal identity. In PNG this would be inappropriate, it is thought, because of the history of borrowing, modification, and transformation referred to before. The creativity of flows could be lost (and see Vaidhyathan 2001). Moreover, the strengthening of bounded ethnicities, as background to bounded cultural styles (Stolcke 1995) is imagined as a potential outcome. Control over external property (a style embodied by made objects) would be linked to internal properties (those given by tribal, or even ethnic/racial, identities). The dangers of linking ownership of resources to race need not be spelled out here. Whether these imaginings actually have any basis in what is justiciable or not, it should be no surprise that the promise of property, a promise that seems to exercise such a strong hold over imaginations everywhere, prompts visions of boundaries, exclusivity, and control.

Creativity and Appropriation

With the increasingly obvious value of intellectual property, people across the world express growing interest in protecting or transacting intellectual and cultural productions. There is an assumption of creativity, and of the value of creativity, written into attempts to protect cultural property, as well as other kinds of intellectual property. Creativity is the source of aesthetic pleasure and

cultural value, as well as of economically valuable innovation. One (the dominant) model of creativity relies upon a kind of appropriation and enclosure, just as imagined in the scenario referred to previously. Creativity in this model is an individual activity, and the rights over its outcomes are clearly attached to the individual whose labor (mental creativity) is apparent in that outcome. In the case of tribal groups, this has been imagined simplistically as a form of communal production, making cultural resources something resembling a tribal commons. In reality, things are far more complex.

The impetus for this volume, and the conference that gave rise to it, has been technological and media developments that make collaborative endeavor central to contemporary economies. The emergence of digital information and communication technologies and the possibilities they provide for new combinations of knowledge, and indeed for new working practices and collaborations, are obvious. But how these changes effect, or are effected by ownership regimes, is a real issue.

This is why I focus on creativity in relation to ownership. A particular conception of the person, and of where the boundaries lie, figures into Intellectual Property. Long ago John Locke pointed out that natural reason demands that the person, as possessor of him- or herself, is also the rightful possessor of things from the commons that they modify through their labour (Locke 1966). There is a natural connection between the producer and the things they produce (that is, objects that demonstrate labor and intent). There is a ready-made location for creativity here—the kind of person whom we call a “possessive individual.” A person, through mixing their labor with nature, or commonly owned resources, makes something his or her own. Intellectual Property is property in exactly this way. Something is appropriated from a common pool of ideas, and transformed through the labor of the mind. This transformation connects the creator to creation through the linkage of (mental) labor. But this formula is a culturally, and indeed historically, specific construction. I think it presents us with a problem. These notions of mental creativity, the person, and how they come to own things, make problematic the recognition of something we might want to label a collaborative or “distributed” creativity (Leach in press).

In other words, there are other models of creativity, and ownership that accompany them, that far from being secondary to cultural production (as in the aim of owning or protecting existing items after their appearance) facilitate a kind of network activity that is central to certain forms of cultural

production in the first place. Ownership connects people and things in vitally different ways. Vital for creative endeavor itself, not just for post hoc reward and attribution.

It has been my argument in a number of writings (Leach 2003a, in press) that one can find a mode of what we can rightly call “creativity” in PNG that at one and the same time contains familiar elements, and yet relies upon different premises from the kind of creativity that is recognizable under IP law. By uncovering the specificities of kinds of creativity, I have been looking to highlight how the concept of intellectual property is embedded in a matrix of Euro-American thinking, in suppositions about being and doing, subjects and objects, agency and personhood. It seems that it is these suppositions, and how their logic conflicts with much of what we observe as creative endeavor in the contemporary world, that has caused critiques to appear from as diverse sources as advocates of traditional knowledge (e.g., Greaves 1994; Posey and Dutfield, 1996), and open source software developers (Stallman 1999).

If this is the case, we must ask how the assumptions about creativity built into IP law structure or restrict the conditions in which creativity will have an effect. That is, how a particular register for creativity, and assumptions about it as a process, might be responsible for undermining forms of creativity that do not neatly register in its terms. One such limitation may be the notion of the individual author (see Strathern, this volume) with all that this implies about creativity as an internal, mental activity. In this chapter, I highlight different modes in which creativity operates, and show how this can be linked clearly to how ownership acts to connect people to what they produce.

The advancement of IP regimes in the interests of developed nations and powerful corporations through WTO/TRIPS (World Trade Organization/Trade-Related Intellectual Property) has understandably elicited a counternarrative in places such as PNG. The possibilities provided by the Convention on Biological Diversity apparently legitimate the application of established property regimes to protect and ensure recompense for biological and cultural knowledge at a national level (Hayden 2003). Happily however, many are aware of the shortcomings of property itself in that context,⁵ and of the difficulties that arise when complex cultural productions are made to appear simple in origin by the attribution of private property.

I focus first on how value is produced, and thus how creativity operates in the Papua New Guinean context. I begin with some contemporary examples of ownership expectations from Madang Province, Papua New Guinea, which

serve as background to the discussion of ownership, and creativity, which are the focus of this study. The detail of the material is a springboard for wider conclusions.

Multiple Ownership of Spirits and People⁶

Some people in the Madang area of Papua New Guinea (where I have undertaken long-term field research⁷) have attempted to introduce new forms of individual ownership (private property), which they see as relevant to production for the cash economy. However, in calling upon the aid of kinsmen as labor for their endeavors, they generate expectations of a different, or what we might term “multiple” (not common) system of ownership. Expectations of multiple ownership, based on customary principles of shared interest in the products of people’s labor, conflict with a convenient reading of capitalism on the part of the organizers of business. This reading places all power and resources in the hands of the capitalist—they are his “property.” Convenient, because at the same time, the entrepreneur appeals to customary authority and multiple interests, rather than wage-labor payments, to recruit their major resource (labor). Development fails all too often in the area because of this tension.

This region, for various historical reasons,⁸ has maintained an interest in *kastom*⁹ that is more than just rhetoric. The spiritual life of many people there is consciously understood as an alternative to Christianity, and is a living contemporary form. In the lingua franca, such religion is known as Tambaran, and covers a complex kaleidoscope of practices and understandings that generate growth and change. One aspect of Tambaran is a male musical cult with secret ritual paraphernalia. The tunes and designs used by this cult are associated with particular people, are owned by them (Leach 2000a), and handed down as heirlooms. That is, they have a named owner. Yet this ownership does not give the right of disposal. They are not “property,” yet they are transacted.

Spirit songs are being innovated all the time. There is a stock of ancestral songs for each residential group, but new spirits are coming into being today. Powerful men dream new tunes, and compose words to accompany them. It is said that spirits of the particular places that men reside give them thought, and generate spirit children in the form of voices (tunes) and accompanying designs in their dreams. The spirit itself reproduces in the mind of a man. A man who has become aware of a new spirit in this way must cook pigs, and

give people cooked food with the pork, in order to unveil the new creation. Having done so, he is known as the owner of this spirit voice. However, far from having all rights in the creation invested in him as an individual, there is a requirement for all members of a residential and family group to discuss the transaction of such an entity. Old and new spirits have exactly the same conditions attached.

In a similar vein, innovation in the carved designs (*torr*) displayed to accompany spirit voice renditions carry the same restriction. A recent innovation in the carved designs displayed to accompany spirit voice renditions was shown in 1999. It came into being when an elder saw a snake twined around a tree in the sacred grove of a particular spirit. When he cooked pigs for a life-cycle payment, he unveiled this new design. Yet such an originator has no right to dispose of this design. In the same way as a new Tambaran song has a single creator, yet is owned multiply by the residential group that its creator belongs to, so a design is multiply owned by a residential group. Why should this be so?

Looking at conflicts over ownership of spirit voices is revealing. The misuse of spirit voices and/or designs are offenses that incur fines among Nekgini speakers. These fines are specifically of valuable items that are used in bride and child payments. In essence, making payments in the currency of kin transactions establishes the inclusion of the wrongdoer in the kin group of those he has wronged through payments that link him, as kin, to those people. Theft, or even appropriation is not really the right gloss for this, then. Claims of inclusion might be a better explanation for what has happened when a spirit is used without authority (Leach 2000a). The consequence is a call by those who do have authority for the person to establish his connection to them. This can be done in retrospect through work,¹⁰ though making presentations that do include him within the generative, kinship relations that have as one of their nodes, particular spirits, songs, or designs. It is this inclusion in the network—spirits and people *belong* to one another—that gives authority/influence over any one of its nodes (people or spirits). It looks like spirits and persons are substitutable. They constitute one another's existence and identity, and so these items are not primarily mental abstractions, but elements in the relational constitution of persons. As family members are also nodes in this network, they all belong to one another.

To examine authorship in this context is to discover that a spirit can reproduce itself. It is not a mental addition or creation in the thought processes

of the person who dreams the thing. The authors of new spirit voices are parties to, or facilitators of, the reproductive potential embodied in the image/song/artefact *itself*. Thus the significant point about such things is not their status as things in the mind, but their analogy with and positioning within, the reproductive capacity of relationships between persons.

The forms of the carved designs (*torr*) must not be copied exactly. Reproducing the same combination of images and figures is seen as shameful by the owners, and as inappropriate copying, by others. Each element that goes to make up a *torr* (particular snakes or lizards, particular designs) are owned by kin groups. The elements are held in the memories of men from these groups, and combined in new forms for each occasion. It is these memories of *torr* that allow carvers to make new ones. There is a novel combination of elements, which to Euro-Americans looks remarkably like the operation of intellectual creativity. And the restrictions on others copying the images seem to confirm this (in the model of copyright). But, as I pointed out, it is not the novel combination (as a mental appropriation from a common pool) but the elements themselves that belong in certain networks of relations. While those who are part of this network may make new combinations using the elements, even they may not copy the combination of images from any previous post, be that of their own creation, or of others.

This, then, is nothing like copyright, where the original idea is instantiated in material composition, and then the rights to copy that composition are attached to the originator of the idea. Here no one can copy the specific forms (i.e., combinations) of *torr* posts. The images that are combined are kept separately available for new creative projects. It is not then a particular instantiation and material realization of ideas that is valued, but the elements, which are valued as instruments for future action.

People do own images, and ideational forms, but these are not owned in objects. In other words, they do not rely on the separation of mental/ideational creativity from its instantiation in an object that can then be owned as property. The same goes for people themselves. They, too, have reproductive potential because of their constitution in the work of others. They can be owned and transacted, but not as property, rather as elements in other's projects.

From the ethnography of transactions and the complaints that arise in the context of those transactions, we can see that the songs and designs that are generated in family relationships are seen as a resource—a powerful one as they elicit the currency of kinship, the currency through the exchange of

which, new persons are created. But because of the kind of resource that they are—a resource commensurate with other aspects of creativity, understood as the regeneration of people and places through the work of family groups—it is inappropriate for any one person to claim (as an individual idea), even though the new song or design originated in their mind. Such things are multiply owned. And here we come to the complex collectivities to which Simet referred.

Common property is not an acceptable gloss of such a complex either. There is an explicit equation of such resources with persons—the commensurate product of other creative work—and persons are not communally owned. Children, like spirit designs, are generated in the specific productive partnerships of kin groups. They belong to certain people, but these people are differentiated by their input. A maternal uncle is not the same as a father, and each receives a different kind of recompense accordingly. Kin is not a simple designation as it also includes entities such as spirits. Peoples' obligations to one another (and their ownership of one another), are due to this multiple endeavor in the production of families. People achieve prominence and authority through association with powerful spirits, and other persons, but they do not achieve exclusive control over them.

Property

In a telling contrast, innovations in the sphere of business (new ideas that make money) do not generate ownership at all. As someone recently told me, “whatever you find through your own endeavor in the arena of the spirit cult belongs to all of us as a family. It is for us all to generate a name for ourselves and consume [wealth] on the basis of this name. But whatever innovations you accomplish on the side of business, you cannot claim the idea behind it.”

When questioned about someone copying their business idea, people reply that everyone wants to make money, and it is open for anyone to try any way they can think of to do so. Business is novel, but it is public new knowledge. What is not public in this part of Madang is the particular creativity that is understood to be part of a family and its interactions with its ancestors, spirits, and lands. This form of creativity is based in particular groups of people, we might say particular relationships. Where it is assumed that ownership of a kind envisaged by Western property regimes is appropriate, as in the convenient mixture of familial obligation to assist in familial enterprise, and cap-

italist appropriation of profits with no regard to family obligation, we see development failing.

There is a wider lesson about IP. It is clearly the inappropriate assumptions about the disposal of the products of resources by a single individual, once those resources appear in the form of money, that is behind the failure of business enterprise in the region.¹¹ Money is consumed by the individual without reference to the long-term relationships that people are engaged in to be productive. The notion of individual authorship, and specifically intellectual work in the attribution of copyright, would perform a similar distortion in the realm of *kastom*.

Preservation of materials is one (important) thing, but it seems to me that of more basic importance is the preservation of the social conditions of creativity itself. Laws that take such property relations as their baseline inhibit the utilization of indigenously appropriate mechanisms for the control, distribution, and protection of indigenous resources. In other words, it is not just the material expressions (object outcomes of creative work), but the actual form of social relations, which must be considered in a discussion of protection or attribution.

We can see that “attempts should be made to develop new exchange taxonomies by analyzing transactions in the light of social relations of which they are a part” (Gregory and Altman 1989, 203). This focus makes clear that it is not just the material, but the actual form of social relations that must be considered. One way of achieving this may be to develop the concept of multiple ownership).

In Madang, persons and spirits are multiply owned because they are the product of creativity, and this by definition does not belong to any one individual. Western capital-based property relations separate through ownership. One might say that this Melanesian economy connects through ownership (cf. Strathern 1996). These principles point to very different modes of creativity.

Valuing Process or Outcome?

Madang people’s valuation and validation of “*kastom*” contrasts sharply with notions of heritage and cultural property as they are articulated in a current and prominent view of culture, and one relied upon by the United Nations Educational, Scientific, and Cultural Organization (UNESCO) for example, in formulating recommendations for the return of cultural property.¹² This in

turn rests upon a contrast in assumptions about the relationship between objects and persons.

Value, in the Lockean tradition, passes from the labor power of the producer into the thing itself. It is this transmission that makes an apparently natural connection between the producer and the object they produce. This is, in turn, based on a notion of the individual as possessor of her- or himself, and thereby, by extension, the products of her or his own labor. But by locating value in productive relationships (that they call *kastom*), and not in things, people in Madang have a different interest. The contrast is between the valuation of culture as tradition and heritage, embodied by objects or sites, and notions of culture that appeal to the inherent and ongoing creativity of human engagement (Kirsch 2001). It is our focus on the thing itself as the locus of value that confuses us here. It means we assume that granting cultural property is the granting of property rights over objects.

In a striking parallel, one that emphasizes the current connections between apparently different worlds and concerns, the ground for the success of open source software lies as much in the way a community and ethos has developed as it does in the brilliance of its prime movers (individual authors). In other words, there are conditions for creativity here in which value is generated without that value being realized by individuals as private property.

The parallels with the preceding PNG example are many. For example, in the development of the Linux operating system, each contributor's work is individually owned; they are identified with that work, and retain ownership. However, the work of one person is only coherent and valuable as a combined work that is *multiply owned* by all contributors. Creativity operates as a distributed process, not as individual appropriation. This is neither collective/communal ownership, nor private property. The willingness of contributors to have their work included in the overall outcome is partly to do with the coherence of the combined work, and with the fact that no one else can appropriate it for her- or himself. There are conditions for creativity here, which are not based upon the logic of motivation and reward in IP, just as the creation of new designs and spirits, and of new persons, are based on an alternative register in the Madang examples I have outlined.

Collaboration, then, is essential in both cases, and relations are not built as external to creations (rights attached to things and individuals), but are already present within them. It is what they do that tells one about one's own capacities. The logic of private property renders relating it as an option, and

a conscious effort, because of the insistence that relationships are things that have to be made, and exist as external elements of persons. If one saw Linux as a kind of person on the Madang model (that is, made up of many people's inputs, each element ultimately available to its contributor for future projects) it would be clear that in the construction of Linux relating is not an option. Without the network, it would not exist. But the IP model of creativity and its workings locate the capacity not in relationships between people, but in individual mental work. The intellect is seen as the source and engine of creative endeavor, not the network of relations from which value emerges.

So we have a mode of creativity tied to a regime of ownership here. Creativity occurs within the individual mind. Its effects are a result of the will, of agentive appropriations from, and subsequent interventions in, the world that exists beyond the person. It is as if the person, through their creative work, remakes or refashions their relationship to others and the world through the mediation of the objects they create. The idioms we have for authorship, ownership, and credit for creativity insist on seeing relations as external to any single entity. Remember Locke. A person is the rightful possessor of anything from the commons that they modify through their labor. There is a natural connection between the producer and the things they produce (that is, objects that demonstrate labor and intent). In PNG, this kind of attachment is very weak. Identity is not in objects attached to the producer, but is seen and known in how others act and respond to one. Dispersal of agency and creativity results.

Now the thing about a dispersed creativity is that its effects can only show in particular people. This is true both in PNG, and here. The vital difference is in the way effects are registered, and how this leads to reward, recognition, and claims. In one case, that operating in the mode of creativity and its register for effect in IP, the register is in the material, object world, and thus external to the person. Property logics make a relation between subject (producer) and object. Property looks like a relationship between people and things, even though it is in fact a relation between persons. In PNG, work is apparent in others' bodies and capacities. When these are demonstrated, claims are admissible.

My argument, then, has been that in the particular conception of creativity we operate with in the West, one based upon the individual mind as the location of creative effort, we have difficulties registering exactly the kind of

dispersed creativity that collaborative endeavor exhibits. New possibilities for combinations of images and previous work afforded by technical developments pose the same issues. These are arenas in which creativity lies in the relationships between persons, and between knowledge practices. When these elements are encompassed by any single mind, which they must be for the identification of an author, and therefore property rights to occur, it looks as if they have been appropriated. This impression is made real by the workings of Intellectual Property, which operate to make objects out of ideas, and then attach them to individual (or communal) producers.

Conclusion

This chapter has two linked points. First, I argued that it is important to understand the essentially distorting nature of private property itself as a form of ownership when introduced in places such as Papua New Guinea (PNG). The distortion is to forms of social relation that lie behind cultural production there. Among other things, the concept of intellectual property sustains assumptions about the individual author and exclusive access that are inappropriate to the kinds of processes people understand as creative. But I do not mean for this observation to be taken as relevant only in Papua New Guinea. Collaborative and multiauthored creations are highly significant globally. Alternative models of ownership, as registers for creative endeavor that acknowledge multiple and differentiated inputs, seem vital in such a world. An understanding of the nature and specific form that creativity and value generation take, in particular circumstances, is essential if the property logic inherent in IP regimes (and based on these two aspects) is not to undermine the very forms of sociality that result in cultural productions in the first place.

Second, I pointed out that creativity itself is not something that can be addressed through current IP law. Instead, a focus on the products of creativity substitutes by making property out of objects. It is through control over these objects that creators realize reward from their creativity under IP regimes as they stand currently. This may have the effect of bypassing the value-generating practices of peoples, and making what they own into tradition or heritage (that is, objects that can be attached to communal/tribal groups).¹³ The rhetoric of IP has always been about facilitating the circulation and creative modification of others' creations (in other words, about flows). There is a danger in current versions of cultural property regulation of

obviating innovation among those with culture to protect (Weiner 1999). This in turn reinforces a stereotypical divide between traditional culture (valued as heritage, but a barrier to innovation) and modern (no heritage value, but reliant upon innovation) that in turn feeds an impulse to appropriate and make value from traditional knowledge or resources by institutions and industries in developed nations.

For there to be creativity, there has to be a recognition that something has happened, or that a novel entity has come into being (Hirsch in press). And flows are also dependent upon recognition. In other words, a register for effect is required. The dominant register we have available is reward (ownership) through property logic. The logic of ownership inherent in this register does not succeed in accommodating modes of creativity based upon multiple and differentiated inputs, and thus we must find registers for creative work that do not rely upon the appropriation of common resources by individual authors if we are to recognize a significant contemporary form of value creation.

Notes

This chapter draws together material also discussed in other writings, notably Leach (2000b in press). The term ownership is used here to indicate a wider set of conceptual referents than “property,” which I use as shorthand for the kind of rights that private property, and particularly the private property granted through current Intellectual property laws, imply. Ownership here is intended to cover the multiple ways in which people feel attached to what they, and others, do, produce, have responsibility for, and so forth. Private property, then, is one of many forms that ownership may take. The fact it is the dominant model in IP law reveals assumptions that many in Europe and America have about the nature of the intellect, of creativity, and of the person. It is part of the intention of this paper to make some of these assumptions apparent through the description of modes of creativity that do not rest upon these assumptions, and thus which highlight the need for theorising alternative models of ownership.

1. “Who Appropriates PNG Cultures?” *The National*, September 25, 2003. Sent around expatriate and scholarly list-serves as well as generating interest with PNG.
2. That is a context with many language groups and cultures. Finding common principles on which to assign rights over intellectual and cultural property among this diversity has proved tricky (see Kalinoe 2000).

3. This construction makes obvious the inherent conflict in nation states when certain groups (on the basis of ethnic or religious identity) claim sovereignty over their own culture (and see Brown 2003). In this case, Simet argues that those who originate cultural productions should be consulted before others use (appropriate) them.
4. Andrew Moutu, personal communication.
5. See Simet article mentioned previously, for example, or Kalinoe in Kalinoe and Leach (2004).
6. This material is also discussed by Strathern (in press).
7. Research undertaken among Nekgini speaking people on the Rai Coast, 1993–1995, 1999, 2000–2001.
8. See Lawrence (1964) and Leach (2003a).
9. Local customs, and much more besides.
10. “Work” is the local idiom for any ceremonial presentation. Work is thus both the combined labor of all those who assist in production, and the transformation of this effort into a form to which others must recognize and respond.
11. For more detail, see Leach (in press).
12. See Leach (2003b).
13. See Leach (2003b).

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