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## **ANTHROPOLOGY AND OBJECTIVITY IN NATIVE TITLE PROCEEDINGS<sup>1</sup>**

Geoffrey Bagshaw

In recent years there has been considerable discussion within the discipline concerning anthropological ‘objectivity’. Sometimes provoked - and often inflamed - by the populist media, this discussion has largely focused on the role and, by implication, professional integrity of anthropologists working on behalf of Aboriginal interests. Although primarily set within the context of various historical and developmental issues, it is obviously also a discussion with significant bearing upon, and implications for, the credibility of anthropologists appearing as expert witnesses in native title proceedings (cf. Maddock 1999).<sup>2</sup>

Most of us engaged in work on behalf of native title applicants would, I think, agree that such comment and/or debate is at once bracing and legitimate. It hardly requires saying that the robust exchange of views on a matter of such fundamental importance can only be good for the development, practice and standards of Australian anthropology. Neither, I might add, is it seriously contested by either side in this debate that anthropologists should always strive to be impartial in the conduct of their research and analysis.

What consistently puzzles me about this discussion, though, is the fact that the principle of ‘anthropological objectivity’ is frequently self-cited as an important, if not motivating and even professionally distinguishing, factor by some (no doubt a minority) of anthropologists who, in

choosing to act as expert witnesses themselves for respondent parties in native title trials, may reasonably be thought to be just as susceptible to imputations of partisanship as those whom they purport to criticise.

Simply put, their rationale seems to be: 'since I (also) work for interests other than those of Aboriginal people and/or their representative organisations, I am necessarily an objective anthropologist'. Whilst this proposition clearly begs several questions, I shall only (and somewhat rhetorically) raise two: does taking money from, and/or appearing for, a party engaged in formal litigation, or otherwise possessing a stated interest in a particular legal matter, entitle one to claim 'objectivity', and, if it does, why, then, are practitioners who choose to work exclusively for Aboriginal interests and/or organisations *ipso facto* considered to be lacking in same?

*Since those self-styled 'objectivists' to whom I am referring are not themselves contracted by genuinely independent parties (that is to say, parties with no direct, or at least demonstrable, stake in a given matter, e.g. the National Native Title Tribunal or the Federal Court itself), there seems to be some real confusion here between, on the one hand, a proclivity or capacity to work for or on behalf of a particular group and, on the other, genuine anthropological objectivity as expressed in the nature and quality of observation and analysis.*

Leaving aside philosophical considerations concerning the very existence and nature of objectivity *per se*, most of us are, I suspect, likely to agree with the view that, at least as a rule of thumb, the practical measure of anthropological objectivity must (and can only) be the degree to which observations and analysis are shown to have an index in empirical (including historical) reality. This measure is most certainly not contingent upon, or sustained by, the matter of whom one chooses to work for. Moreover, in respect of such choices, objective research does not – and

should not - require an ethical disengagement from the world. What it does require is the fearless and impartial application of intellectual rigour – precisely the same demand made of an expert witness by the Federal Court of Australia, whether generally or, more specifically, as an anthropologist in a native title claim.<sup>3</sup>

Another, somewhat baffling, feature of contractual ‘objectivity’ as evidenced by some contemporary practice is that the ‘objective’ anthropologist rarely, if ever, appears (in either the public or the legal sense) in direct opposition to the interests of people(s) with whom he/she has previously worked, particularly if that work has been performed in a demonstrably independent capacity (e.g. post-graduate research). Apparently, such prior exposure is held to be inconsistent with the notion of objectivity - a real concern, one would have thought, for the conduct of any follow-up research in the same area! Within the adversarial context of a native title trial, however, it seems to be sufficiently ‘objective’ for an anthropologist to question (or at least problematise) precisely the same **order of interests** held by people(s) personally unknown to him/her by appearing as an expert witness for a respondent party or parties. In this connection, fieldwork, once universally regarded as the hallmark of the anthropological enterprise (*pace* Levi-Strauss) and esteemed as the very basis of any claim to informed authority, is relegated to incidental status in the current formulation of much ‘objective’ opinion.

Precisely because it lacks such authority, armchair opinion of the sort alluded to here is, I believe, significantly more likely to bring our discipline into disrepute – at least in the public, if not the judicial, mind – than is any readily defensible charge of ‘partisan’ work in the field. I say ‘readily defensible’ because the level of scrutiny to which the latter work is subject is generally (and in the case of native title claims, almost invariably) far greater than that required for, or typically accorded to, an academic thesis or publication. For it is not only colleagues who read, review and, at times, challenge such work. The relevant work is also often the subject of intensely close

inspection and critical comment on the part of lawyers, judges and, perhaps most searchingly, the very people about whom we write, and whose interests are most vitally concerned therewith.

Of course, the proponents of 'objectivity' can, and often do, argue that their own work is in no way directed towards a particular finding or outcome. While that may certainly be true (although in some instances of which I am aware expert anthropological reports prepared for respondent parties in native title litigation seem to be as much concerned with polemical critique, unduly negative inference and/or the canvassing of client-driven issues as they are with providing balanced and objective comment), the fact remains that they are paid for their services by a party which does have a particular outcome or finding in view. As the so-called 'objectivists' well know - their work is used by contractors to achieve highly specific ends. How, one is compelled to ask, does this situation differ from that of an anthropologist working for an Aboriginal organisation or representative body? To assert that such agencies inevitably dictate the outcomes of anthropological research and writing is, as those of us with experience in these matters can readily attest, quite simply false.

If, however, we take lasting contributions to the discipline itself as an index of scholarly objectivity (whether such contributions are considered at the level of ethnographic description or at the level of wider social theory), a comparison of the works of those engaged in 'objective' contractual anthropology and 'non-objective' contractual anthropology over the past two or three decades would, I think, prove to be a most instructive and conclusive exercise. Our greatly enhanced understandings of Aboriginal systems of land and sea tenure are but one obvious case in point.

Such a comparison would also serve to place in proper historical perspective another commonly voiced 'objectivist' contention concerning the nature and role of what is often disparagingly

termed anthropological 'advocacy'. For some 'objectivists', working exclusively for Aboriginal interests appears to constitute both a dangerous politicisation of anthropology and a relatively recent, intellectually stultifying, break with a halcyon past of pure (read apolitical) research. If this is indeed the case, where, then, do such renowned past proponents of Aboriginal rights and interests as Donald Thomson, W.E.H. Stanner and Ronald and Catherine Berndt fit into the wider scheme of Australian anthropology? Were they simply apolitical social scientists? Or, alternatively, were they little more than politicised activists, incapable of 'objective' anthropological thought? And, finally, given the absence of any agencies equivalent to today's Aboriginal representative organisations in the period prior to the 1970's, what were the motivations underlying their involvement in various projects sponsored by governments and/or government instrumentalities?

On the basis of their writings, all of the anthropologists concerned were, it seems to me, clearly and fearlessly endeavoring to do what they thought 'best' – for Aboriginal people, for the discipline of anthropology and for the pursuit of professionally-constituted 'truth'. How far one agrees with their individual perspectives, the methods employed, or the resultant outcomes is, of course, another matter entirely. The very fact that such goals and intentions were evidently not perceived as mutually exclusive by such eminent scholars should serve to remind us of the history of the anthropological endeavor in this country.

As long ago as 1952, Ronald Berndt was moved to write in the foreword to his classic ethnography *Djanggalawul: An Aboriginal Religious Cult of North-Eastern Arnhem Land*:

There has been much discussion among anthropologists regarding the mingling of basic research results with applied anthropology. We believe, however, that the anthropologist who over a period has worked with a particular group of people, who has learnt their language, has come to appreciate their way of life, has become in some degree absorbed (as far as this is possible for a stranger and a European) into the society, and has become interested in and emotionally attached to them, discovers sooner

or later that he feels morally obliged to aid them in some practical way. Professor Herskovits has commented on this obligation: 'It is the nature of the case that the anthropologist is best fitted to see the strains and stresses of underprivileged groups, or of natives who no longer control their own lives. He sees these stresses and strains from the less pleasant, under-side of the situations in which we live. He sees the problems of natives as no administrator, however gifted, can possibly see them. When then, he is in a position to aid in obtaining for the natives he knows some reinstatement of the human rights they have been deprived of, he customarily welcomes the opportunity ...'. This is what the anthropologist feels in Australia today ... (1952: xxii-xxiii)<sup>4</sup>

In sharing these sentiments, I take the view that, both as a matter of course and of conscience, personal work choices should not – indeed, must not - be inadvertently confused or deliberately conflated with the objective (i.e. rigorous and intellectually impartial) conduct of anthropological research.

Finally, at the level of practical involvement in native title proceedings, it must also be clearly understood that, whether working for applicant **or** respondent parties, the first duty of the anthropologist as an expert witness is to the Court and **not** to his/her client(s) (Black CJ 2001: 1, also endnote 1). In this connection, advocacy by the expert witness for any party joined in the relevant proceedings is expressly precluded (ibid; cf. Maddock *op. cit.*: 23-25 ). Those who think or act otherwise will almost certainly find their biases and lack of objectivity starkly exposed in the glare of cross-examination. It can fairly be said, therefore, that, aside from the attendant legal and moral ramifications (one is on oath, after all), any non-objective (i.e. deliberately partisan) approach to the role and duties of an anthropologist as an expert witness will, in all likelihood, serve to work against the best interests of the witness him/herself and, by extension, his/her client, to say nothing of the Court and of the discipline of anthropology.

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<sup>1</sup> I thank Peter Sutton for comments on an earlier draft of this paper.

<sup>2</sup> Kenneth Maddock 1999 'Bearing Witness' pp.23-25 in Australian Anthropological Society Newsletter 75 (March 1999).

<sup>3</sup> See Black CJ, 'Practice Direction: Guidelines for Expert Witnesses in proceedings in the Federal Court of Australia' (revised 31 May 2001); also Cooper J, 'Federal Court expert guidelines'. Pp. 203-211 in *Australian Bar Review* (1997-98) 16. As set out in the former document, the general duties of an expert witness in the Federal Court are defined as follows:

- An expert witness has an overriding duty to assist the Court on matters relevant to the expert's area of expertise.
- An expert is not an advocate for a party.
- An expert witness's paramount duty is to the Court and not to the person retaining the expert. (2001: 1)

<sup>4</sup> Ronald M. Berndt 1952 *Djanggal: An Aboriginal Religious Cult of North-Eastern Arnhem Land*. London: Routledge & Kegan Paul.

